

JOINT LEGISLATIVE COMMITTEE ON
ADMINISTRATIVE RULES
NOVEMBER 19, 2009
EXCERPT

9. (b) OR 2009-79 PUBLIC UTILITIES COMMISSION
Utility Pole Attachments

VICE-CHAIRMAN PILOTTE: Folks, it is quarter of one. I know we are losing two members at 1 o'clock. Would the Committee -- I know one member needs to leave at two. If we took a lunch break and came back in a half an hour, what would be our quorum to go -- allowing us to go beyond two o'clock? How many could continue beyond two? So one, two, three, four, five. We would not have a quorum. So I will suggest that we go into the Objection Response 2009-79 at this point. Okay. Attorney Lucas.

ATTORNEY LUCAS: Yes.

VICE-CHAIRMAN PILOTTE: We postponed 8(a). Yes, all 8(a), (b), and (c) have been postponed and 9(a) has been postponed. We did that earlier.

AMY IGNATIUS, Commissioner, Public Utilities Commission: I didn't know whether to fill out a card from the PUC or not.

VICE-CHAIRMAN PILOTTE: Please. Thank you. Let's see what we have here. Those who did not choose to testify, do you still wish to have their card?

ATTORNEY EATON: Just hold on to them. I'll record them in the minutes.

VICE-CHAIRMAN PILOTTE: All right. Attorney

Lucas.

ATTORNEY LUCAS: Yes, sir.

VICE-CHAIRMAN PILOTTE: And I will call Committee's attention to we have received much -- rather lengthy response from the agency which has been in your possession for, I believe, two months. There is a letter here from Representative Kaen which I will call to the attention of the Committee members and will then be referred to -- somehow to make sure that those issues are heard. But until then, Representative -- I'm sorry, Attorney Lucas.

ATTORNEY LUCAS: Good morning.

REP. SCHMIDT: Where?

VICE-CHAIRMAN PILOTTE: Here in Room 301.

ATTORNEY LUCAS: I'm glad I left him such an opportunity. Hum -- we are dealing at this point with Utility Pole Attachments and these things have been pretty thoroughly gone through by both Public Utilities Commission and the staff. There were a few comments that were made that were not addressed by Public Utilities Commission in their response.

At this point we have got -- I should say the status is that there was an Objection Response and then another response. That response is dated October 16 and that is what is before you. It's Objection Response to notice number 2009-79. And I'm just going to briefly go through the items that still remain on the table as we know them.

VICE-CHAIRMAN PILOTTE: Hum -- I'm sorry, the October --

ATTORNEY LUCAS: October 16.

ATTORNEY EATON: The response is the cover letter dated October 16, 2009, with the attached amended rule.

VICE-CHAIRMAN PILOTTE: Okay. Now where along the line -- I guess I have -- am I in the right item? Does everybody have that? I can't seem to find mine.

MS. IGNATIUS: Mr. Chairman, I have an extra copy if you'd like.

REP. SCHMIDT: You've got it.

VICE-CHAIRMAN PILOTTE: It was a cover page. I was looking everywhere else, which is why you shouldn't have me as a Chair, folks.

REP. SCHMIDT: So move.

VICE-CHAIRMAN PILOTTE: I'm sorry. Attorney Lucas, please.

ATTORNEY LUCAS: The first comment is with respect to Page 1. It appears in the purpose clause. Our note was the phrase "in the public interest" does not appear in 374:34-a and adds another qualification in determining rates. In other words, the statute speaks only in terms of just and reasonable in rate setting. What the rules add is another -- another condition basically that it be in the public interest. I was -- I was unclear as to why that was in the materials and I'm sure that Public Utilities has a response.

VICE-CHAIRMAN PILOTTE: Okay. If you would identify yourself, please.

MS. IGNATIUS: Thank you. Mr. Chairman, my name is Amy Ignatius. I'm a Commissioner with the New Hampshire Public Utilities Commission. And I know that representative -- excuse me -- Commissioner Below was present at the last hearing. He was not able to be here today because of another meeting that he's at and asked if I would come, along with Kate Bailey who's the Director of the Telecommunications Division who you've see before on this matter and Lynn Fabrizio who's a staff attorney who you've also seen on this matter. We want to thank you for all of the time that you've given to this. It's been -- been a lot of materials.

VICE-CHAIRMAN PILOTTE: Is that present and future, as well as past?

MS. IGNATIUS: We always appreciate all of the effort all of the time. I would just like to give a bit of a summary of where we are as an overview and then for specific questions happily hand it to Kate and Lynn for things that I may not be able to address as well. And I understand you've been going at it for quite awhile today and your time is short so I won't give you a lot of extra discussion of things, won't go over things that have already been addressed in prior hearings.

But I do think it's important to give a bit of an overview as we get started. The focus of it really is that I think there's been an impression that this is a very complicated and controversial rule. It's certainly given rise to a lot of comments and a lot of proceedings and issues that we have dealt with and know are of importance to people. But when it all comes down to it, the rule itself is, I think, fairly straightforward and not

controversial. What we are doing is to create a forum in New Hampshire, rather than in Washington D.C., for those that want to take advantage of a dispute resolution process here at the Public Utilities Commission, rather than going to the Federal Communications Commission in Washington which has been what was in the past. With changes in federal enactments, and I know you've been through this in the last hearing so I won't go through that, but with changes in the telecommunications act federally it gives that authority back to the state under certain circumstances. That's why the bill was passed in New Hampshire in 2007. It gave us the authority. It set forth a path for us to create rules to spell out how we would manage this dispute process and how we would manage the overall oversight of pole attachments on utility property, which is within the PUC's jurisdiction. We are not changing the jurisdiction of other state agencies. We are not moving in on any of the law regarding municipalities. We are not trying to change the superior court process that municipalities and others can avail themselves of. We are not mandating that everybody comes to the PUC. But if they choose to do so, they may do so.

The other thing that the rules do that I think are valuable, and particularly at a time when we have an expansion of Broadband opportunities, we really need clarity about how -- how everyone is going to work together. And so what the rules do is they spell out things that, until now, has been, I think, kind of ad hoc. There are now clear requirements. If you want to attach you've got to make an application in writing. You don't just call up on the phone. You don't leave people trying to guess at what your plan is. You have to put it in writing. The pole owner has to review it and

respond in writing. Sometimes they would do that over the phone. Sometimes they wouldn't answer at all. Time would go on and on and on. There's now a deadline. They have got to get back and say yes or no in writing and explain why. So it puts some definition on some things.

It requires notice if someone is going to add new things to a pole or remove something from a pole. Sometimes people did that with full notice. Sometimes they didn't. And so there's been a bit of a looseness, I think, about the whole world of utility attachments and so that the rules are trying to just put some definition on it so everybody knows where they stand. They know what the rules are. They know what they need to do and take it from there.

The process we've been through has given people, as I count, at least five opportunities for comments. They have been very well written. People have worked hard at this. I think we're at a point where we should be able to move forward, reach a final resolution of this rule, and be able to go forward. As we get past the winter and into the spring construction season, I think we're likely to see more Broadband attachments with new ARRA funding coming out of Washington. And we really ought to be able to have finality on the rules and we'd appreciate that if we could get there and appreciate your willingness to stay right now and not take a break and not move us off to the next -- the next meeting of this Committee.

Obviously, there's some open issues still that remain. If there's a way we can resolve any of those today with the staff's comments, we are happy to do so. If there are things we can -- just language changes that we could agree to this

morning or this afternoon, and do it through the process of a revised objection, we would be willing to look for those opportunities so we can reach finality.

(Senator Cilley returns to the committee room.)

MS. IGNATIUS: I guess with that, if you would like us to walk through open issues, wait for your questions rather and hear from you or more from Attorney Lucas on open questions, we are at your disposal.

VICE-CHAIRMAN PILOTTE: Representative Schmidt.

REP. SCHMIDT: Thank you, Mr. Chairman. Well, my initial question is after our action at the last meeting in which we put in a preliminary objection, I heard, actually to some degree rumors, that there had been some discussions and negotiations with some of the objectors and I'm wondering whether you have achieved any accommodations with them and vice-a-versa, them with you, which would to your -- under your understanding remove the fundamental objection that -- especially the LGC has raised.

MS. IGNATIUS: Representative Schmidt, since the hearing before the Committee there has been quite a bit more work and the response that you received on October 16th attached a revised rule that showed some amendments that were made in response to those issues, and we can walk through those changes if you like.

The bottom line is, I think, a number of people who had issues have told us that they're satisfied. It may not be quite what they wanted. They didn't get quite everything, but they think that they're rules they can live with, with the exception of the

Local Government Center which has told us that they still believe the rules are not acceptable to their standards and would, I think, plan on testifying today that they think that they should not go forward.

REP. SCHMIDT: Hm-hum. Thank you.

VICE-CHAIRMAN PILOTTE: May I ask you at this point, not to preclude what they're going to say, but how have you interpreted what their questions or comments have been to you?

MS. IGNATIUS: Mr. Chairman, my -- I think we have a real difference of view. And we spoke just out in the hallway this morning before the hearing again just to be sure that I understood it since I hadn't been involved in all of the meetings until now. I truly believe we are not infringing in any way on what the law is regarding municipalities, and they are of the view that we are. And I -- I don't understand that, but I accept that that's their view. And they don't understand, I guess, where I come from where I am. So we are at a very -- just, I think, a fundamental difference on that.

VICE-CHAIRMAN PILOTTE: Okay. Attorney Lucas, you wish to make any specifics on this or are we going to work with --

ATTORNEY LUCAS: Essentially, all that we were referring to or offering were changes in language which I'm not sure are where your focus might lie.

VICE-CHAIRMAN PILOTTE: The question is where the change of language has occurred has it addressed issues that were identified earlier?

ATTORNEY LUCAS: That's right. I mean, there are

five -- five issues, so to speak, remaining. They all have to do with, you know, parts of the language of the rule. They have been pointed out before. They have never been dealt with by the Committee per se. That's all that I have to offer.

VICE-CHAIRMAN PILOTTE: All right. Do you wish to add anything else at this point? Otherwise, we'll ask you to make sure you don't leave the room.

LYNN H. FABRIZIO, ESQ., Hearings Examiner, Public Utilities Commission: Would you like us to respond to Attorney Lucas' issues?

VICE-CHAIRMAN PILOTTE: If you would, please.

MS. FABRIZIO: We'll go one by one. He's raised the first issue on Page 1, the reference to "in the public interest" in Rule 1301.01. And we did try to address this in our Objection Response when we discussed the standard of review that the PUC follows generally in its proceedings and we've made some references to where public interest or public good actually show up in other statutes. And the reason we added it here was we were taking into consideration the language in the pole attachments statute, 374:34-a, Section IV, which says that the Commission shall consider the interests of subscribers and users of the services that are transmitted on the pole attachment facilities, as well as the interests of the consumers of the pole owner. And we felt that given our general standard considering the public interest, we thought it was appropriate because it reflected exactly those types of interests in this rulemaking.

VICE-CHAIRMAN PILOTTE: Okay.

MS. FABRIZIO: And that said, if the Committee would prefer, we would be willing to delete that language and we don't think it would harm the rules themselves in that event.

VICE-CHAIRMAN PILOTTE: If that is done in all cases where it was identified?

MS. FABRIZIO: I believe it was only that. Oh, it shows up again in 1304.05 and that is actually a separate issue, I think, that deserves more discussion. Would you like me to just respond to that now?

VICE-CHAIRMAN PILOTTE: But I guess what I'm trying to do is trying to wrap my head around what you just said. You're willing to strike that provision but --

MS. FABRIZIO: In 1301.01.

VICE-CHAIRMAN PILOTTE: But not everyone. In 1301.

ATTORNEY LUCAS: That's really the only place it appears, I believe.

MS. FABRIZIO: It shows up again, and Mr. Lucas has brought it to our attention, in 1304.05. There's a slightly different explanation for its use in that provision which I'd be glad to address.

ATTORNEY LUCAS: Why don't we address one more comment that I made before and then we'll go with this one. The earlier clarity comment is similar a theme and that is -- appears on Page 2. In determining access, the statute says only that the statute needs to be non-discriminatory. And PUC went on and added beyond that the terms just and

reasonable. Again, I mean, in the first instance public interest raises issues only because it's such a broad and encompassing term. This is a little less complicated from my standpoint, but I didn't know why the Public Utilities went beyond the statute. They're not -- you know, you're not bound to mirror the statute obviously. This isn't -- this is language to implicate or implement the statute rather than anything else, but I just I was curious as to why that was done.

MS. FABRIZIO: I'd be glad to respond to that as well.

VICE-CHAIRMAN PILOTTE: Please.

MS. FABRIZIO: Attorney Lucas is correct in the provision in the statute that uses the word access uses only non-discriminatory access. However, in Section II of the statute it talks about the rates, charges, terms and conditions of attachment to a pole. And we were thinking kind of in a global sense that access includes the concept of rates, terms, and conditions that apply to that access. And in Section II, the just and reasonable standard is used. So we've kind of combined the two concepts in this rule provision.

VICE-CHAIRMAN PILOTTE: Representative Schmidt.

REP. SCHMIDT: Thank you, Mr. Chairman. So what violence is done to the statute by the inclusion of the words --

ATTORNEY LUCAS: You --

REP. SCHMIDT: I already heard what you said; but I want you to go into this again in terms of how is the statute not adhered to or -- or mis

served by the addition of these words?

ATTORNEY LUCAS: And maybe it's just a different approach to how you operate, but I -- I rarely see agencies going beyond what is required of them under the statute in terms of for certain tests or certain requirements that they undertake. And this -- this came to -- came to or rose to my attention in this instance only because of this different perspective. I don't think necessarily any violence is done to the statute. I think -- I don't think the Public Utilities Commission had to go as far as they did with respect to both of these comments.

REP. SCHMIDT: My apologies, Mr. Chairman. Ms. Fabrizio, so what is your purpose in adding the language if the statute doesn't require it?

MS. FABRIZIO: Our thinking was that the pole attachment agreement itself is part and parcel of access to a pole, because agreements are required. And the access here as set forth repeats the concept of just and reasonable with respect to rates, terms, and conditions of attachment to a pole. So we thought that it was fitting that each of these terms was included in this particular provision.

VICE-CHAIRMAN PILOTTE: Follow-up?

REP. SCHMIDT: So in view of the fact that essentially this arrangement is going to come into contact with virtually everyone in the State of New Hampshire, is it not?

MS. FABRIZIO: I'm not sure I understand the question.

REP. SCHMIDT: Once these -- once these poles

are, you know, once these attachments are in place, to the degree they're not already in place, obviously, you're serving the public -- I mean the public will be served with electricity, with communications, with entertainment, you name it.

MS. FABRIZIO: Hm-hum.

REP. SCHMIDT: It will come into contact with virtually every citizen of the State of New Hampshire. So is it not in the -- is it not in the interest of the using public, consumer, to have a statement, a purpose that the, you know, the rates and access and so forth will be on a reasonable and just basis which is going to be in the public interest. Is that not something the public should be assured of?

MS. FABRIZIO: Yes, and that is why we included it in the provision as drafted.

REP. SCHMIDT: Thank you very much.

VICE-CHAIRMAN PILOTTE: If I heard you correctly, on the back page of this particular document, okay, which is 374:34-a, Pole Attachments, Roman II, you're indicating that the reason you're adding these two words is that you believe you have the authority from the statute which states, whenever a pole owner is unable to reach agreement with the party seeking pole attachments, the Commission shall regulate and enforce rates, charges, terms, and conditions for such pole attachments with regard to the types of attachments regulated under 47 U.S.C. section 224 to provide that such rate, charges, terms and conditions, are just and reasonable.

MS. FABRIZIO: Yes.

VICE-CHAIRMAN PILOTTE: That's the language that you're transferring to the other; is that correct?

MS. FABRIZIO: Exactly.

VICE-CHAIRMAN PILOTTE: Attorney Lucas.

ATTORNEY LUCAS: A couple more quickly. On Page 2, again, we find the term generally applicable in engineering purposes as a description. I suspect in this situation that the Utilities Commission will say that this is a term of art known in the trade and it doesn't need further explanation. Is that essentially right?

MS. FABRIZIO: Yes. Thank you.

ATTORNEY LUCAS: On Page 3 the term extraordinary circumstances is used. We were concerned because we weren't sure what the circumstances were. You raise the issue of *force majeure*.

MS. FABRIZIO: Hm-hum.

ATTORNEY LUCAS: If that's satisfactory to the Committee, that's fine with us. It's just it's a broad -- just it's a broad term at this point, and we thought that it might be helped by criteria.

VICE-CHAIRMAN PILOTTE: Ms. Fabrizio.

MS. FABRIZIO: Yes. We had discussed this, I think, at our last meeting that what we were referring to here are cases of *force majeure* and we specifically put this phrase in to address pole owner concerns that there may be special circumstances where they cannot meet this deadline

for a response, and our intent was to provide a narrow justification for such an event. If Attorney Lucas thinks it could be improved by adding, for example, *force majeure*, or something like that, we would certainly be amenable to that; but our intent was to limit the application of this.

ATTORNEY LUCAS: I think anything you can do to limit the term extraordinary circumstances would be helpful. And if you want to use *force majeure* or something similar to that, that's fine.

MS. FABRIZIO: Okay.

VICE-CHAIRMAN PILOTTE: So are we suggesting that that would be added here at this point?

ATTORNEY LUCAS: If this is -- if we are talking in terms of conditional approvals -- I'm sorry, revised approvals.

VICE-CHAIRMAN PILOTTE: Yes.

REP. SCHMIDT: If I might?

VICE-CHAIRMAN PILOTTE: Representative Schmidt.

REP. SCHMIDT: Clearly, *force majeure* is a legally understood term; but for the general public, the non-French speaking part of the public --

VICE-CHAIRMAN PILOTTE: Doesn't everybody understand French?

REP. SCHMIDT: Well, you and I and a select few, but the point is that to the degree the public can read it and understand it, is it your intent that the words extraordinary circumstances are greater

than *force majeure*? Is that merely an intent to render that term in English?

MS. FABRIZIO: The latter. It's an attempt to make it -- render it in English as you say.

REP. SCHMIDT: Right. I suppose to the degree that the lawyers want to know what you mean by -- by extraordinary circumstances, I suppose to include the term that they would understand would maybe make it clear. Wouldn't hurt.

VICE-CHAIRMAN PILOTTE: Okay.

REP. SCHMIDT: But they're, in your view, they are -- the term extraordinary circumstances is -- the term of extraordinary circumstances is equivalent to *force majeure*.

MS. FABRIZIO: Essentially.

REP. SCHMIDT: Essentially.

VICE-CHAIRMAN PILOTTE: For the layperson is what you're suggesting; but if it's going to be a statute or rule which obliges certain folks, it probably would be better if it were specific.

MS. FABRIZIO: Spelled out. Okay.

VICE-CHAIRMAN PILOTTE: Okay. Other issue?

ATTORNEY LUCAS: Two left only. One appears on Page 5. In this situation it's where the public interest shall require, the Commission shall order rates, changes, terms, or conditions for pole attachments be modified.

VICE-CHAIRMAN PILOTTE: That is which specific

rule?

ATTORNEY LUCAS: I'm sorry, it's PUC 1304.05. It's on Page 5. It's the next to the bottom provision.

REP. SCHMIDT: Right.

ATTORNEY LUCAS: And with the PUC commencing with the term when the public interests are required, we were uncertain as what the criteria might be for public interest in that situation, in that context.

MS. FABRIZIO: Thank you. And I think we discussed this issue in response to a question from Representative Schmidt last time. In this case we're limiting the instances in which the Commission would go in and change the terms and conditions of a privately negotiated agreement. And that is to say that when the public interests so requires, in other words, where we believe that the interests of either subscribers to services or consumers of the pole owner facilities themselves are implicated, then we think it would be appropriate for the Commission to step in and change the terms, rates, and conditions, such that they are just and reasonable under our standards. But that said, if the Committee feels that this is problematic language, I don't think the rules would be hurt by removing this sentence from that provision.

VICE-CHAIRMAN PILOTTE: In its entirety?

MS. FABRIZIO: Starting from where the public interest so requires.

VICE-CHAIRMAN PILOTTE: To -- for the pole

attachments be modified. Okay. Are you suggesting that that be done? If that were done, Attorney Lucas, does that eliminate a problem here?

ATTORNEY LUCAS: I think that would be fine.

VICE-CHAIRMAN PILOTTE: Thank you.

ATTORNEY LUCAS: The last one is on Page 6. In this context, it's the aspect of determining just and reasonable rates for attaching entities and there are three factors listed on the top of Page 6 and the first two are highlighted. In our view it was unclear how these factors would be applied and by themselves the factors do not indicate what criteria are used to set just and reasonable rates.

MS. FABRIZIO: And the language that we have used in number one and number two, subparts of that provision, are taken straight from the statute and which directs the Commission to consider the interests of the subscribers and users, as well as the consumers.

VICE-CHAIRMAN PILOTTE: Which part of the statute?

MS. FABRIZIO: 374:34-a, Section IV.

VICE-CHAIRMAN PILOTTE: Okay.

MS. FABRIZIO: And this, again, goes to the way the Commission conducts its adjudications. We by statute are an arbiter of interests between the utilities and the rate payers, and this is an example of where we would take the interests into consideration in a balancing of the various party interests. Now that said, if the Committee and Attorney Lucas feel that additional detail is

needed, we would be willing to insert something. Before I tell you what we would propose, I would say this -- these rules have not been inaugurated by the Commission yet. It's new territory for us. And so some of these interests, you know, have yet to be raised or discovered as to what might arise. But we can anticipate that, for example, we could insert interests of subscribers and users, such as but not limited to, Broadband capability and competitive choices in the market, something like that. That might be an issue we might consider in a future adjudication. But, again, we don't know for certain because we haven't had specific petitions come before us.

VICE-CHAIRMAN PILOTTE: So what you're saying these two, you're quoting the language of the statute and the purpose of the rules is to make that language specific to how it would be implemented.

MS. FABRIZIO: Hm-hum.

VICE-CHAIRMAN PILOTTE: And that doesn't seem to have been done. It is just restating the statute in rules, if it's your intent to clarify the statute.

MS. FABRIZIO: You're right.

VICE-CHAIRMAN PILOTTE: Somehow it's a little bit difficult to, you know, comprehend.

MS. FABRIZIO: You're right from that perspective. We were listing these as considerations that we intend to take into account in the event of an adjudication. But as I said, we'd be glad to insert further illustrative examples and not exclusive examples in the rule.

VICE-CHAIRMAN PILOTTE: What I'm getting at, Ms. Fabrizio, if you say nothing, if you drop one and two completely, the statute --

MS. FABRIZIO: Hm-hum.

VICE-CHAIRMAN PILOTTE: -- is what's going to drive this. The statute is exactly the same thing as what you've said here. So I don't know that we are getting -- I really don't know whether we are getting anywhere by just simply saying, well, you know, maybe we could insert. Either you insert or you don't. Either you clarify or you don't. Or am I misunderstanding what should be done here?

ATTORNEY LUCAS: One of the concerns here is that people get treated equally. That there is -- you know, that the rules are not -- cannot be tilted in one direction or another in favor of one entity or another. And, you know, to the extent you can have devise language that would do that and would be more fulsome than what we've got out of the statute, that would be, I think, the Committee's interest.

MS. IGNATIUS: Mr. Chairman, I'm a little bit lost on procedure and so help me here. Under a revised objection, revised response, I'm not even sure what the right term is, if we -- if we need to do this sort of on the fly right now or if we have a bit of time.

VICE-CHAIRMAN PILOTTE: No, we don't need to do it on the fly right now. An revised objection would -- and I'll ask Attorney Eaton to explain the process at this point.

ATTORNEY EATON: Revised objection is just another objection. You'd have 45 days. The

Commission would have 45 days to respond and then the Committee would look at that response.

VICE-CHAIRMAN PILOTTE: But you only get one of these.

MS. IGNATIUS: Trust me, one is quite enough. I think we can develop language that really does spell out what those interests are and gives greater clarity. Your comments are very well-received and layout what those are. You know, we -- we have by statute an obligation to be an arbiter of all of these interests and in this case you have not just the utilities and rate payers but the competitive utilities, the non-regulated entities, the interests of municipalities, the interests of the general public, safety issues. There are so many things going on. And so it will take us a little bit of time to try to think through all of those and spell them out but we are happy to do that. And I think that would apply for both section A and section B under the section.

VICE-CHAIRMAN PILOTTE: Okay. So that there would be some additional.

MS. IGNATIUS: Yes, sir.

VICE-CHAIRMAN PILOTTE: And please involve the stakeholders.

MS. IGNATIUS: Oh, absolutely.

VICE-CHAIRMAN PILOTTE: So that we can find some common ground way or we get here again. Okay. Other issues?

ATTORNEY LUCAS: That's all I have.

VICE-CHAIRMAN PILOTTE: Okay. Now I have three cards here. I guess two are from the Municipal Association and one from segTEL and could I ask Mr. Katz to start off with and then we'll go to the Municipal Association and please don't leave the room.

MS. IGNATIUS: We're here.

JEREMY KATZ, Chief Executive Officer, segTEL: I'm Jeremy Katz. I'm the CEO of segTEL. I was here about a month ago, a month and a half ago. SegTEL is a competitive provider of fiber optic telecommunications services in New Hampshire, along with Maine and Vermont and Massachusetts. And I think that I can keep my comments to under 45 seconds this time. We need rules. The rules as they stand in our opinion are far from perfect, but --

REP. SCHMIDT: You're talking about this proposal?

MR. KATZ: The proposed rules in the October 16th response. But imperfect rules are better than no rules, and the industry needs to be regulated in a manner that creates order and efficient utilization of resources and promotes the interests of all utilities users in the state; and these rules, as imperfect as they are, will further that objective and further the implementation of the statute more than having no rules at all will and that's all I have to say.

VICE-CHAIRMAN PILOTTE: Okay. Representative Schmidt.

REP. SCHMIDT: Thank you. Mr. Katz, I very well recall your earlier appearance. And if I can

paraphrase, it seems to me like the last time around --

MR. KATZ: Hm-hum.

REP. SCHMIDT: -- you also stated that the rules weren't perfect, and I don't think any of us imagine that perfection is a reasonable goal.

MR. KATZ: That's correct.

REP. SCHMIDT: But it seemed to me that you may have used the term that you thought that this -- that these rules were a fair compromise between all the competing interests and that they would do the job that desperately needed to be done.

MR. KATZ: I wouldn't go so far to say that they're a fair compromise simply because segTEL's opinion is that the purpose of the statute is to provide mandatory access to facilities that wouldn't otherwise be voluntarily granted. And as access is mandated, balancing of interests is not really the test and under the federal statute, but I think that these rules will help to promote an environment that will create an orderly regulatory world in this state for outside plant facilities and that's just probably going to have to be good enough.

REP. SCHMIDT: Well, do you believe that these rules are better than remaining completely under the federal rules?

MR. KATZ: No. I think that if I had a time machine when two years ago the statute was proposed and segTEL along with electric companies and incumbent phone companies and the cable TV industry appeared, and we felt that the federal regime was

simply going to be implemented on the local level, because we all understood the federal regime and felt that it was geographically inconvenient we felt that that -- the implementation of the federal regime on a local level would be a very positive development. Our opinion is, is that the rules that are presented, at least in the October 16th version, still deviate from elements of the federal regime that the FCC had determined, which we feel are substantially more pro competitive. Again, you know, that might not turn out to be the case as time goes by, as these rules are implemented and controversies are adjudicated. But I don't -- I can't honestly say that these rules are sort of the implementation of the federal regime that we had imagined.

REP. SCHMIDT: Hm-hum.

VICE-CHAIRMAN PILOTTE: Thank you.

REP. SCHMIDT: Thank you.

VICE-CHAIRMAN PILOTTE: Could I ask Mr. Sanderson from the Municipal Association.

PAUL G. SANDERSON, ESQ., Local Government Center: Thank you, Mr. Chairman, Members of the Committee. I have with me here also Susan Olson who is a researcher in our Government Affairs Department.

Since the last hearing I must give the PUC credit where credit is due that they have sought out responses from us. They have sought out information. And I certainly would say to them just because they don't concur with our opinions doesn't mean they're not listening; but I would like to hone in on the areas where we think that there are

problems that remain.

The first problem that we --

VICE-CHAIRMAN PILOTTE: And these are problems of rules, not of policy?

MR. SANDERSON: Yes.

VICE-CHAIRMAN PILOTTE: Okay.

MR. SANDERSON: With respect to the definition of attaching entity. Okay. We have long advocated in the context of these rules that governmental entities should not be covered as though they were telecommunications providers. In the October 16th response from the Commission they seem to make an important concession which is that there certainly are activities of governmental entities out there that they don't regulate, such as fire alarm. And instead they were saying what we are really interested in taking a look at is the safety of this product as it is attached to the utility plant. We agree with that position. We agree that municipal and governmental attachments, state-owned attachments, should not be unsafe. And so, therefore, we concur that if there were this bifurcation, that if they wanted to regulate these types of attachments on that ground and that ground alone that that would, in fact, be appropriate and that would be an improvement to the rules. To date they haven't done so. I believe that they could do so, so we make that particular comment.

With respect to the next --

VICE-CHAIRMAN PILOTTE: Could you be a little bit more specific on that? What you're saying is you would allow fire alarms to be connected but not

local community access TV; is that correct? Would that be accurate?

MR. SANDERSON: If we go back to that specific example. To the extent that there is a television or other telecommunications service that is being delivered through equipment that is municipally owned or owned by the State, at that point they become telecommunications providers and they have to follow the same rules that any other attacher would have to provide. However, if we have equipment that is up there for governmental and public safety purposes and is not a telecommunications provider, we have long advocated under these rules that we are not attaching entities under the statute and should not be regulated as such; specifically, with respect to the term, rates, terms, and conditions.

Now, in the testimony that I just heard from the Commission they seem to be willing to back off language of rates, terms, and conditions and instead talk about safety. We agree that any municipal attachments that, in fact, are placed upon utility plants should be safe. And to the extent that the Public Utilities Commission were conducting proceedings to determine whether or not they were safe, they definitely would have jurisdiction to do that but not to set rates, terms, and conditions.

VICE-CHAIRMAN PILOTTE: The statute, which is what we have to go from.

MR. SANDERSON: Yes.

VICE-CHAIRMAN PILOTTE: Okay. We are not policy committee.

MR. SANDERSON: Right.

VICE-CHAIRMAN PILOTTE: The statute specifically goes on regulate and enforce rates, charges, terms, and conditions to such attachments.

MR. SANDERSON: Yes.

VICE-CHAIRMAN PILOTTE: You've got to help me here.

MR. SANDERSON: What we have been trying to advocate all along is that governmental entities should not be regulated on that basis because we are not telecommunications providers.

In the Objection Response provided by the Commission, they seem to concede that point saying what we're interested in doing in looking at municipal attachments on utility plant is to make sure that they are safe. And our testimony to you is simply we agree with that position and disagree to the extent that the Commission asserts an ability to regulate those attachments under this particular statute for rates, terms, and conditions, because we are not telecommunications providers.

VICE-CHAIRMAN PILOTTE: Senator Cilley.

SEN. CILLEY: Mr. Chair, thank you very much. I think that in the latest communication from the PUC they seem to go a little bit further than that. This is what I have and you can respond to it.

It says the Commission's rules define attaching entities as including, but not limited to, telecommunications providers, cable TV service providers, incumbent local exchange carriers,

competitive local exchange carriers, electric utilities and governmental entities. The FCC definition is similar and attaching entity means -- includes cable system operators, telecommunications carriers, incumbent and other local exchange carriers, utilities, governmental entities and other entities with physical attachments to the pole, duct, conduit, or right-of-way. The proposed rules require attaching entities to adhere to certain notice, safety, and good-faith negotiation requirements. To remove references to governmental entities from the definition of attaching entities subject to these rules, as LGC and DTC propose, would remove any enforceable requirement that municipalities adhere to certain notice, safety, and good-negotiation provisions with respect to placing attachments on poles. The Commission considers it a statutory duty to ensure that all poles and attachments are installed and maintained in full compliance with applicable safety codes and requirements, which include the right of pole owners who are responsible for the operation and maintenance of the poles to be notified of the facilities that are attached to these poles.

MR. SANDERSON: Yes.

SEN. CILLEY: So it seems to go a bit beyond the safety aspect.

MR. SANDERSON: Yes. Except that they're saying the statutory basis of that particular authority is 374:3, rather than 374:34-a.

SEN. CILLEY: Well, they cite the federal law, 47 CFR 1.1402.

MR. SANDERSON: Hm-hum.

SEN. CILLEY: And they -- I don't have the statutory reference here. So you're saying here is 374:34-a, II? No, that's not right.

MR. SANDERSON: If I could summarize again. Our concern has always been to the extent the Commission attempts to treat municipal attachments, the governmental attachments that are there for public safety and other public service purposes that are not there to provide telecommunications services, to the extent that we are regulated the same way as a competitive local exchange carrier, that that's inappropriate. Okay. That if they are using the authority they have under 374:34-a to regulate those attachments, that's inappropriate.

However, to the extent they're using authority that they have under 374:3 to say that those same materials up on a utility plant are safe, that that is appropriate. But there is no such demarcation or bifurcation in the rules. We are treated the same as though we were a telecommunications service provider, which would give them the authority in one of these proceedings to determine rates, charges, and conditions, completely unrelated to safety.

SEN. CILLEY: Follow-up, if I may?

VICE-CHAIRMAN PILOTTE: Follow-up.

SEN. CILLEY: Could you give us the full range of uses that a municipality might have for these pole attachments? Because it's my understanding they went beyond simply fire alarm systems and that sort of thing, that increasingly there are close-loop systems for some form of telecommunications.

MR. SANDERSON: What they are is the ability of municipal departments to speak to their own staff at remote locations. So if you have city hall being able to speak to a police station, being able to speak to a fire station, or a central office of a school being able to speak to all of its schools. The ability to deal with any shelter activities. In other words, public safety, governmental communication, intra-communication of that type. It has long been our position that that's not a telecommunications activity. There are others here who may completely disagree with that, but that's been the position that we, in fact, would take.

SEN. CILLEY: What would you call it?

MR. SANDERSON: I would call it the provision of public safety services and governmental services.

SEN. CILLEY: Okay.

MR. SANDERSON: Non-commercial, non-retail. The ability of our own people to speak to our own people.

VICE-CHAIRMAN PILOTTE: Regulated or not regulated?

MR. SANDERSON: Our belief is non-regulated by the Public Utilities Commission because we believe we do not fall under the definition of telecommunications service provider in either the federal law or the state law. And, again, just because you are a rules committee that's a policy question. And so --

VICE-CHAIRMAN PILOTTE: And we've had a very specific statement from the policy committee that they have given all of these issues thorough

examination and are coming back with a recommendation that they be adopted.

MR. SANDERSON: Okay. Well, certainly, the policy statements received by you from a policy committee are entitled to weight, you know, and that's an issue that the legislature as a whole will deal with. I can't deal with that. But certainly, we don't believe the law is clear on this at all and that's why we've advocated so strongly the way that we have. We believe we are not subject to the same type of regulation as a competitive local exchange carrier.

VICE-CHAIRMAN PILOTTE: Mr. Sanderson, how could -- what potential harm can come from that regulation upon you on those areas which you consider should not be regulated?

MR. SANDERSON: The specific possibility of a harm?

VICE-CHAIRMAN PILOTTE: Correct.

MR. SANDERSON: And I suppose this goes on to our next point, too, which is the absolute need to have municipal licenses provided prior to pole attachment proceedings in PUC. Let me give you an example.

As municipalities, we are absolutely charged with maintenance of the right-of-way. Okay. Our concern is that to the extent there is not a requirement that a municipal license be acquired prior to the installation of utility equipment in the right-of-way, you could have a situation where a competitive local exchange carrier, someone else, is just out there in the right-of-way placing items on poles that the municipality has no idea is out

there.

VICE-CHAIRMAN PILOTTE: But isn't there -- did we not have testimony from the PUC that there has been an understanding that notice has to be given and the owner of the pole has an opportunity or has a responsibility to agree or to respond to the fact that something like this is going to happen and at least you become aware of it? I mean, you may not always agree with it but you are aware. What I'm hearing you say now is there's a potential for something happening absent your notice.

MR. SANDERSON: Yes.

VICE-CHAIRMAN PILOTTE: You're awareness of that.

MR. SANDERSON: Yes. I will say that since our last hearing and in the Objection Response the Commission has, in fact, added a reference to 541-A:39, which we definitely appreciate, which means that to the extent there is a dispute and the PUC is, in fact, adjudicating it, they understand and acknowledge the need to require -- to comply with that statute and provide notice to municipalities. That would probably prevent much of the potential of which I'm about to speak but not necessarily all, because it would only deal with cases where the matter has gone to a dispute with the Public Utilities Commission and they have commenced an adjudicative proceeding. But to the extent that a proposed attacher goes to a utility and they say, fine, place your material out there, okay, the municipality has no notice that that is about to occur. They have no idea what is, in fact, being placed in the public right-of-way, the right-of-way that all of us own. Okay. That is the evil that is out there today that we're all trying

Joint Legislative Committee on Administrative Rules

Excerpt

2009-79 – Public Utilities Commission

Utility Pole Attachments

so very hard to stop.

Okay. If you go out there today at the scene of an automobile accident, a pole is down. Okay. It is municipal and state first responders who are there to that particular location. They have no idea what they're going to face. They have no idea what they're going to see, because the municipality has no notice of what is actually there. They know by having given licenses to the telephone company and to the electric company there would be electric material there and there would be telephone company there. But any number of other things might be there that they have no idea what they are. We have worked very long and hard over the past five and a half years with the utilities to try to remove that potential. We have also suggested that it is an evil for municipalities to place items on utility poles without providing notice to the utilities and that's something that must be stopped. And that's been also part of our discussions. We have many members here in the room today who participated in these discussions for the past five and a half years trying to develop uniformity and licensing practices, trying to develop notice so that these types of things no longer occur. Okay. And so it has become a critically important facet of those discussions that before an item is placed upon utility plant, a municipal license be obtained in advance so that we know that items are there. Not so that we pass any judgment on whether they are a good or an evil, but simply that we know that they are there.

Okay. The PUC feels that to the extent they place such a requirement in their rules that they would be somehow codifying in their rules 231:159 et seq, the business process that the legislature has, in fact, imposed by the municipal licensing

scheme. We respectfully disagree and say it doesn't -- it isn't a violation of rulemaking practice or procedure to make reference to a law that we should acknowledge is applicable saying that in a business process you must comply with 231:159 before you deal with adjudicative processes about these pole attachments. That's our fundamental disagreement. Okay. To the extent that licensing procedure has been followed in advance and a license is obtained, fine. Let the proceeding go to the PUC for adjudication.

I would have one small item of disagreement with Commissioner Ignatius about the voluntary nature of these proceedings. Courts have a principle called administrative exhaustion and I'm sure you've hit this before. What it simply means, and you're exhausted otherwise, I realize.

REP. SCHMIDT: We are getting there right now.

MR. SANDERSON: What that means is a court will not adjudicate a dispute if there is an administrative process available before that has not yet been attempted. So to the extent you have issues that could have been resolved in a Public Utilities Commission adjudicative administrative proceeding, and you go to the Superior Court first, the Superior Court will say, no thank you, go back to the PUC and finish your work. So, therefore, I think the scope of the matters that will go before the PUC are much broader than Commissioner Ignatius may have led you to believe and that would be the nature of our disagreement. That's why these are so fundamentally important.

VICE-CHAIRMAN PILOTTE: Okay. All right. Yes. Representative Schmidt.

REP. SCHMIDT: Thank you, Mr. Chairman. The process you were describing a few minutes ago about it seemed to me an ongoing refinement of the arrangements between all the service providers and municipalities and the PUC involvement as well, it is, if I understood you correctly, it is an ongoing attempt to improve communication and not what goes down the lines but rather communication between the entities which provide those services.

MR. SANDERSON: Yes, sir.

REP. SCHMIDT: And do you think that this rule is going to in any way impede that ongoing attempt to improve the communications, you know, Cool Hand Luke failure to communicate? Do you think that this rule is going to impede that process?

MR. SANDERSON: We do believe it would impede it to the extent that the PUC would adjudicate an issue without the receipt of a municipal license in hand. We do. And the reason is that items could be set forward and the PUC would make orders that might be fundamentally inconsistent with that municipal licensing scheme. We believe that compliance with 231:159 is a precondition to attachment, not just a factor.

VICE-CHAIRMAN PILOTTE: I'm sorry. Follow-up.

REP. SCHMIDT: So in this process that we are talking about, is it not in the interest of everyone involved to have as uniform a scheme, use that in the positive connotation, as uniform a scheme and a series of procedures and regulations as uniform a situation as possible so that you don't have a hodge-podge of one town is this way, another town is this way? Is that not in the interests of everyone involved?

MR. SANDERSON: Yes, sir, which has been the effort we have been ongoing with the utilities and others for five and a half years to try to obtain agreement on what that more uniform process should be.

REP. SCHMIDT: Follow-up? And this municipal license, it's only you've come in, you've genuflected, we put the mark of whatever on your forehead and you're allowed to go forward and we don't have any influence whatsoever. We don't constrain you in any way from doing whatever it is you want to do that's within satisfied guidelines?

MR. SANDERSON: When you say you, do you mean the proposed attacher? In other words, as I understood your question, it would be the proposed attacher would come to the municipality and obtain a license and then would be able to go to the utility and achieve a pole attachment agreement at that point as to specifically where they would be placing their equipment upon utility poles. That, in general, is the business process we are working through.

REP. SCHMIDT: But my question is, with regard to whether the municipality is going to have any influence whatsoever on the procedure once they have blessed the very fact that this service provider is going to be engaged in this process, but the municipality isn't going to say you've got to do X and not do Y or whatever. It's just going to bless the fact you've told us, you paid maybe a fee or maybe not a fee and you go forward, and the municipality has no positive influence on what will be done. Is that what you're saying?

MR. SANDERSON: Not quite, because 231:159

doesn't say quite that. If you come in and seek a municipal pole license you pay a fee of \$10 set by statute. Okay. It isn't that we say nothing. It's that we say you must be located in a place that is safe for the purposes of transportation. Okay. To the extent that there is already an existing pole location, okay, at that point you have electric and telephone equipment that is already placed in the right-of-way, then the issue of about that general safety for the purpose of transportation probably goes away. So you're right. It would be not that much of a process at that point. But to the extent that the proposed attacher is coming in looking to place additional new points of equipment that could have some impact upon the safety of the right-of-way, then we might have something to say in that circumstance. Yes.

REP. SCHMIDT: If I may follow-up? But isn't it something that they're going to do any way?

MR. SANDERSON: Actually, no. Because in the world as it exists today, competitive local exchange carriers never seek municipal licenses and we have no idea that they're there.

REP. SCHMIDT: Well, that's with regard to your level of knowledge about what's going on. But are you saying that -- that the attachers can just -- it's a wild west, they can put up anything they want, anywhere they want, any way they want?

MR. SANDERSON: No. I wouldn't say that. Because certainly utilities regulate them with respect to the applicable codes. Okay. It isn't a wild west to that extent. But to the extent that the municipalities do not know what is in their particular right-of-ways, that's correct. Because there's no specific acknowledgment and business

processes currently used that they have to let municipalities know that they're there.

REP. SCHMIDT: Okay. I'll defer to my colleagues for the moment.

REP. CASEY: Okay. Oh, yeah, 'cause you're going to love this. I have administrative ennui or whatever it's called. Thank God it's got a name.

REP. SCHMIDT: Exhaustion.

REP. CASEY: Exhaustion. I'm struggling with understanding just about everything I've just heard. And it's very similar, I think, to the excerpts that occurred from an August 20th, 2009, conversation we had and this time it was with FairPoint. But it's similar and it's sort of in the --

VICE-CHAIRMAN PILOTTE: And that's coming.

REP. CASEY: Yes.

REP. SCHMIDT: Thanks for letting me know that.

REP. CASEY: I don't quite understand a lot -- so much. So let me try to frame the question. We were talking about safety. Obviously, one of the things we want to do is make telecommunications in our state better, more competitive, allow more -- you know, all of those things, which is good for municipalities, it's good for the state. What you're concerned about is that something's happening in your jurisdiction but that you have given somebody the right-of-way to use. The right-of-way. Okay. So the pole in the right-of-way falls over. And unless I'm mistaken, there's going to be electrical lines and telephone

lines and computer lines and unless there's a taser line, it's nothing that's going to hurt anybody when it's lying there on the ground. So then when municipal shows up --

REP. SCHMIDT: No, no, no.

REP. CASEY: -- to fix-it --

REP. SCHMIDT: The power line is lying on the ground is live.

REP. CASEY: The power line I mentioned, the electrical lines. They know the power lines are there. I mean, what governmental agency does not understand that there are electrical lines attached to the poles at this point? You got that. You know that there are telephone lines attached to the pole at this point. Evidently, you're concerned that other things might be attached to the pole. Okay.

MR. SANDERSON: Yes.

REP. CASEY: I'm trying to imagine in my mind what those things would be that you're concerned about in a public safety situation, because you mentioned that.

MR. SANDERSON: Okay.

REP. CASEY: Okay.

MR. SANDERSON: Sure.

REP. CASEY: As I said, unless there's a taser line, what would hurt? Why would it make a difference whether there's three telecommunications lines instead of two or three Internet provider -- service provider, high-speed Internet service

provider lines instead of two? I don't understand.

MR. SANDERSON: Sure. Well, let me see if I can try to deal with this, because one of the other things that we have done during this past five and a half year period is participate in a pole docket at the Public Utilities Commission where there was a long receipt of information with respect to the dangers to first responders that are caused by accidents and response to accidents. Okay. The short answer to this -- and again, I'm not the electrical engineer, nor am I the first responder -- there is this common assumption if something falls on the ground it's immediately de-energized. Okay. That's not the case. It's entirely possible that anything you see in front of you could be energized.

REP. CASEY: Okay.

MR. SANDERSON: Not just at that location but at another location. You can have something fall on a line two miles away from what you're looking at and there can be power that is going through it that can cause danger to the first responder. Part of the problem is restoration, too, because when this happens at 2 o'clock in the morning and you call the utilities to say a pole has been struck, a pole is damaged and down, restoration needs to occur.

There is a system between utilities at particular locations as to which is the lead utility that responds. Okay. When they respond, they have to identify each and every item that's up there because they have to deal with those individuals, too, so that those services can be properly identified and restored. That wants to happen quickly, not only for the safety of the

first responders, but also for the utility and efficacy of the road itself. How long is the road to be essentially closed while the restoration efforts are going on? It's pretty clear when you have the telephone company and electric company. Okay. But when you have unknowns up there, okay, what is it that's down? What is it that will take to restore it? Is it dangerous or not? You can't possibly tell just by looking at it. Okay. So therefore, the first responders need more information about what is there to aid in the process of restoration and working with the utilities. They need to be safe when they attend to the location, they need to be safe as they're directing traffic around the location, and they need to make sure the right utilities are notified so that restoration happens quickly, and efficiently and safely for all involved.

REP. CASEY: Further question?

VICE-CHAIRMAN PILOTTE: If I understand this correctly, okay, not to -- what I'm hearing is that you folks say the license not only it makes us aware of what's going to be up there, more than gives us the right or the authority to say no or regulate or another way. Is that relatively on target?

MR. SANDERSON: I hope I've explained to you adequately the importance of that license for all of this multitude of reasons.

VICE-CHAIRMAN PILOTTE: But your concern is that, that you become aware of it so that your first responder going to the site is aware of what the heck's going to be -- he or she is going to be dealing with. Not only to restore the power and the phone or land lines or whatever, but for also your

convenience the road is no longer -- is not unduly blocked.

MR. SANDERSON: Yes. So the transportation service can be restored.

VICE-CHAIRMAN PILOTTE: I'm sorry.

REP. CASEY: So thank you for that, Chairman, that clarification. I mean, you're only asking for notification. Is that what you're -- I mean, seems to me I'm hearing about a bludgeon where you could really use, you know, a tap. You don't need to -- if all you're asking for is notification of what is going to be attached to the pole, is that it?

MR. SANDERSON: Well, I don't wish to characterize it as bludgeon or tap. Notice is critical.

REP. CASEY: You just want notification.

MR. SANDERSON: Yes.

VICE-CHAIRMAN PILOTTE: Okay, Representative Schmidt.

REP. SCHMIDT: Second go-round or third.

VICE-CHAIRMAN PILOTTE: I would call your attention, Representative, that I fear we may losing our quorum in some -- at some immediate --

REP. SCHMIDT: I won't go too long. The municipalities that I'm aware of, many of them have these communications networks which are not communications networks by your definition. Do they -- so they're talking within the city. The fire department is talking, the police department is

talking, the school department is talking, whatever, in the larger cities. And are these communication networks interlinked with those of other cities? Can you -- can your police department in town -- city X talk with the fire department in town Y?

MR. SANDERSON: Not through these non-governmental service locations. They can by using commercial service.

REP. SCHMIDT: Yes, but not -- that's my question is through the private municipal location network only.

MR. SANDERSON: Yes.

REP. SCHMIDT: They can't talk to -- Rochester can't talk with Dover through that system, only through their regular communications network.

MR. SANDERSON: That's my understanding.

REP. SCHMIDT: Your understanding.

MR. SANDERSON: Because I'm not -- I'm not the person who's in charge of all of these different networks. But I will tell you that in all of my discussions with all the municipal officials the way you've described it is the way it's been described to me.

VICE-CHAIRMAN PILOTTE: All right. Thank you very much. I'm going to ask that three representatives from FairPoint, if you would be willing to be together. I notice two of you have requested ten minutes. It ain't going to happen. And anything that you've heard already I would hope would not be rehashed. Maybe that's not a technical

word.

REP. SCHMIDT: Don't say hash to people who haven't had lunch.

RICHARD WALLER, Concord Fire Department: Is it too late to put in a card, sir?

VICE-CHAIRMAN PILOTTE: Please do.

SARAH DAVIS, ESQ., FairPoint Communications: I'll go pretty quickly not to further aggravate the Committee. My name is Sarah Davis. I'm an attorney with FairPoint Communications. I have Erin Austin and Lisa Barney with me. Erin is the Vice-President of our Engineering Department and Lisa works for her in our right-of-way department, as well as a variety of other jobs which I won't try to cover them all. FairPoint appreciates everything that the Commission has done with these rules. They really have worked hard and that's never been our contention that they haven't listened or worked hard. Our issue is with these rules can be explained on a basic level that will not make your head hurt, as I believe you said last time.

We agree with Mr. Katz to an extent and we agree with Commissioner Ignatius in that these rules and the best part of these rules are the rules that stem from what the stated purpose of these rules was which was to take a federal regime and bring it to a local level so that we could be heard in front of the PUC with these issues instead of having to go to Washington D.C., and those are the best parts of the rules and everything that they retained from the federal rules are the best part. If the federal rules were just instated on this state level that would be best case scenario

Joint Legislative Committee on Administrative Rules

Excerpt

2009-79 – Public Utilities Commission

Utility Pole Attachments

for everyone. But these rules go way beyond that, unfortunately, and the other stated purpose that they have is that make ready time frames for FairPoint as a pole owner responding to a competitor or somebody else as to when they can attach to a pole. They state that as important.

VICE-CHAIRMAN PILOTTE: Is that something that was done in the statute?

MS. DAVIS: Is that something that was done in the statute?

VICE-CHAIRMAN PILOTTE: Is that authority that was given in the statute?

MS. DAVIS: Yes.

VICE-CHAIRMAN PILOTTE: If it's given in the state --

MS. DAVIS: I'm going to say I agree with it.

VICE-CHAIRMAN PILOTTE: -- the rules cannot go beyond that.

MS. DAVIS: Right. I was just going to say I agree with that. I think you were going somewhere else with that. I wanted to say that those are the best parts of the rules. That's what we agree with. I mean, we don't like being strapped to a 45-day time frame, but we understand the competing interest and can live with the 45-day time frame and those -- we don't object to those portion of the rules and Chairman Getz actually testified in front of Committee about that specific issue to make ready time frame and he also testified in front of Committee --

VICE-CHAIRMAN PILOTTE: Could I ask you, please, to focus on the items that are remaining issues.

SEN. CILLEY: Some of us really need to leave.

VICE-CHAIRMAN PILOTTE: Because I am losing a quorum in a very short period of time, and --

MS. DAVIS: I think it's unfortunate you're not giving us the same time as everyone else but I will focus.

VICE-CHAIRMAN PILOTTE: I will give you the time you need, ma'am. Okay. It's just that if we are going back over something that has already been mentioned or if it's something that we don't have authority over, or if it's something that has not been in contention, because as of right now, there has been a preliminary objection. The bases for that objection are the only things that we can address now.

MS. DAVIS: Hm-hum.

VICE-CHAIRMAN PILOTTE: We can no longer go back to the original -- the initial proposal or even the final proposal. We can only address the issues that were objected to when we had our marathon session, and that's what we need to do.

MS. DAVIS: Yes, sir.

SEN. CILLEY: For the record, Mr. Chair, and thank you, but for the record, I don't think that we are attempting to limit your time in terms of the testimony that's pertinent to all of this. We really don't need to hear what's working well. We can't do anything about that, but we appreciate the comment.

MS. DAVIS: Okay. I'll begin with the comments of the PUC in their first couple of pages. On Page 3 they state that -- that some of the parties have stated that -- that the section on the scope which includes governmental entities that other parties have stated that the authority of the PUC is limited beyond utilities, is limited so that they can't regulate the attachment of utilities. To the extent that that is -- what they state that is the position of FairPoint that is not true. We certainly have never stated or never intended to state the Public Utilities Commission does not have authority over the attachments of FairPoint as a public utility. So just want to clarify that.

Our problem with that section as we've stated repeatedly is that it goes beyond what the federal rules call for. It goes beyond what the statute calls for. Because the statute references a federal statute which limits attachments to telecommunication service providers, public utilities, and cable TV service providers and does not go further and include governmental entities and FairPoint has stated many times it just -- it will cost FairPoint a lot of money in litigation because the PUC regulates these entities that they propose -- that the statute proposes be included and does not regulate governmental entities on a broad scale. So we could have litigation in a court on a separate issue where the PUC doesn't have authority. And so FairPoint has always contended that they're going too far with these rules and they should stick to what the federal rules call for and that's over telecommunication service providers, cable TV service providers, and public utilities.

VICE-CHAIRMAN PILOTTE: Am I hearing that you're

saying that the statute has gone beyond what the Feds and that you're objecting to?

MS. DAVIS: Yes.

VICE-CHAIRMAN PILOTTE: That is the policy. We can do nothing about that. We can only look at what authority has the statute -- the legislature given to the PUC. If they're acting within the statute of New Hampshire, we may not agree with that, six folks here may not agree with it, but that is not something we can do anything about.

MS. DAVIS: When you said statute, I thought you meant the federal statute. This goes beyond the state statute 374:34-a because that state statute references the federal statute. So I'm sorry I was unclear. And so we think they are exceeding their authority granted under the statute 374:34-a.

We further think, and I can say this on a broad level and then go into specifics, they are exceeding their authority any time that they're shifting costs from a pole owner -- in these rules where they're shifting cost from a pole owner to an attaching entity. There's nothing in the statute that suggests that. There's nothing in the federal statute cited that suggests that that's appropriate. And fortunately -- unfortunately, means a lot of money for FairPoint Communications.

We also think a very broad level that any time they have disregarded safety concerns in these rules, that they're going beyond the statute and that the statute calls for them to look at safety concerns and when they allow boxing and extension arms in circumstances and attaching below FairPoint Communications, they are ignoring valid safety concerns.

They say in their rules that FairPoint objects to their rules about the lowest attachment for reasons other than safety, that is just not true. That we -- every -- the reason that we believe we need to be the lowest on the pole is completely and 100% related to safety. We filed many comments and stated over and over again all the reasons why we believe that that applies to safety.

VICE-CHAIRMAN PILOTTE: If you would, Senator Cillely.

SEN. CILLEY: Yeah, forgive me. I'd like to back up just a little bit to your earlier statement.

MS. DAVIS: Sure.

SEN. CILLEY: Under 374:34-a, Roman II, it goes on to -- you know, talks about the agreements and then talks about 47 U.S.C. Section 224 that provide such rates, charges, terms, conditions, are just and reasonable, et cetera. This authority shall include, but not be limited to, the state regulatory authority referenced in 47 U.S.C. Section 224 (c). Is that what you were referencing earlier in terms of exceeding its authority or is there more specific passage?

MS. DAVIS: What I was referring to when I referred to exceeding the authority is that it talks about over rates, charges, terms, and conditions, that exist in 47 U.S.C. 224, and to the extent they try to regulate rates, terms, charges, and conditions beyond that that they're exceeding their authority.

SEN. CILLEY: So how would you respond to that last line? This authority shall include, but not

be limited to, the state regulatory authority referenced in that section.

MS. DAVIS: In section (c)?

SEN. CILLEY: Section (c).

REP. CASEY: 541?

VICE-CHAIRMAN PILOTTE: 374.

SEN. CILLEY: No, 47 U.S.C., Section 224 (c).

MS. DAVIS: Well, section (c) in 47, 224, talks about state regulatory rates, terms, conditions, and it talks about -- it says in (1), nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, charges, terms, or conditions, or access to poles, ducts, conduits and rights-of-way as provided in subsection (f) of this section, for pole attachments in any case where such matters are regulated by the state. So it's talking about -- section (c) is talking about where the FCC is not taking more than is given to -- is not taking more than is given in this statute and is not trying to usurp regulatory authority given to the state.

SEN. CILLEY: Quick follow-up, if I might?

MS. DAVIS: You want me to continue?

VICE-CHAIRMAN PILOTTE: I believe we are talking about the State statute which says the authority shall include, but not be limited to, the authority referenced in that. So that the authority of the state by statute is to regulate charges, enforce rates, charges, terms, and conditions.

SEN. CILLEY: One more point and I think Scott or Ned, I'd like you to weigh in on this. Just in terms of, you know, exceeding its authority.

MS. DAVIS: Hm-hum.

SEN. CILLEY: It's my understanding that, in general, when there is some prevailing federal law in almost any instance that the state can always impose or even if it's a state and the municipality can always exceed what is given but never do less than.

ATTORNEY LUCAS: They can always be stricter which is the general provision.

MS. DAVIS: So the answer that I was getting to is what is referenced in section (c) you have specifically to section (c) to say there are things that are regulated by the state PUC and FCC is not through these rules taking that over. So what these rules are saying by that is that we're not -- that you can go beyond what the FCC is saying and what the federal statutes are saying is already state powers which is go beyond to the powers for pole attachments regulated under 47 U.S.C. 224. And I would say otherwise that reference would not be in there. It would not speak to rates, charges, terms, and conditions as referenced in 47 U.S.C. 224 if it was not meant to be a limitation. Otherwise, that language would have very little meaning in the statute. Because it already speaks to pole attachments. So I suggest that the legislature did intend for that to be a limitation. If you go to the Committee, the testimony during Committee, that was exactly what was stated by Chairman Getz was that this -- these rules were intended to bring to a local level what was regulated at a federal level

Joint Legislative Committee on Administrative Rules

Excerpt

2009-79 – Public Utilities Commission

Utility Pole Attachments

and never spoke of increasing that power or going beyond that.

VICE-CHAIRMAN PILOTTE: Other issue?

MS. DAVIS: Yeah. And just want to go to a few other issues which is the PUC when they came back with these rules made some significant changes that we have not been able to comment on before and have a very large effect on our business. And I just want to point those out to you. I know you have something from the policy committee.

VICE-CHAIRMAN PILOTTE: Are you saying this is since the --

MS. DAVIS: Since the last.

VICE-CHAIRMAN PILOTTE: The changes that have been made?

MS. DAVIS: Yes, sir.

VICE-CHAIRMAN PILOTTE: The PUC has not communicated with you or you have not communicated with them?

MS. DAVIS: No. They asked that we submit comments on the comments of other parties but they ask that we not resubmit any comments that we have already made and we have already time and time again addressed these issues so we felt like resubmitting them was going beyond what the PUC asked and they have -- they did not, you know, we didn't see these changes coming to be perfectly honest. And we have discussed these. And I can be specific and go through each one.

VICE-CHAIRMAN PILOTTE: I think it's likely that

what we are going to -- what's going to happen today is a continued -- a revised objection. I believe it would behoove you --

MS. DAVIS: Okay.

VICE-CHAIRMAN PILOTTE: -- to communicate with them at this point so that we don't -- you may not agree eventually. Okay.

MS. DAVIS: Yes.

VICE-CHAIRMAN PILOTTE: But at least you're aware of where they're coming from. They're aware where you're coming from and everybody is on the same page.

MS. DAVIS: Yep.

VICE-CHAIRMAN PILOTTE: Whether you agree or not, maybe that might happen.

MS. DAVIS: Can I just point out one example that shows where it's more than just disagreement?

VICE-CHAIRMAN PILOTTE: Please.

MS. DAVIS: We fought very hard for months on end to get the Telcordia Blue Book included in these rules. This was with the objection, I believe, of segTEL. This was in these meetings with the PUC, some parties objecting, some parties agreeing, the power companies, and forgive me if I'm stating this wrong, but as I remember the power companies and the telephone companies for the most part agreed with this being included in there because it prescribes very safe methods, work methods, on which to operate on our poles which the PUC aptly states we are ultimately responsible for

Joint Legislative Committee on Administrative Rules

Excerpt

2009-79 – Public Utilities Commission

Utility Pole Attachments

the safety on our poles and ultimately face the liability. So we fought for months to get that in there. And then in this latest provision it was taken out. And we never saw that coming because this conversation had been vetted repeatedly over and over again about including the Telcordia Blue Book or not. And it sets forth for us on our poles that to make sure that the methods are safe and that's why we have included it. And they say it's a company standard, a FairPoint standard. It's not. It's actually a Bell Operating Company standard which is a defined term in the telecommunications act, speaks of Bell Operating Company because it goes back to the break up of the Bell Operating Companies. These standards are an industry-wide standard. They are not a FairPoint standard and it's all about safety. I mean, it's important that it be referenced in there.

VICE-CHAIRMAN PILOTTE: All right.

MS. DAVIS: Were you going to suggest that I not go through each objection?

VICE-CHAIRMAN PILOTTE: Well, at this point I believe it would be, if the issues that you've already heard that the Board is willing to look at, there are others that have not been looked at mentioned.

MS. DAVIS: Yeah. They made another change in the make ready timeframes which is really troubling as well. We had, again, gone over this --

VICE-CHAIRMAN PILOTTE: You're going to give us a reference?

MS. DAVIS: I'm sorry, PUC 1303.12. They took out prepayment of fees.

REP. SCHMIDT: Page 4.

MS. DAVIS: Yes. And it goes on to five. The change is actually on Page 5. But they took out pre-payments of work that we need to do which may be setting a pole, may be moving our attachments. It may be -- but they took out that these carriers have to prepay for these services. And there's absolutely no sense to that whatsoever. If they want to object to our charges, as they can under rates, charges, terms, and conditions, that's one thing; but to suggest that we can't collect payment before we place a pole, and that we may have to place a pole and never get paid for it.

VICE-CHAIRMAN PILOTTE: Is that a change that came between the --

MS. DAVIS: Yes, sir.

VICE-CHAIRMAN PILOTTE: -- last time you were here and now?

MS. DAVIS: Yes, sir.

VICE-CHAIRMAN PILOTTE: Okay. So we'll have them address that, please. Thank you. Others?

MS. DAVIS: Go ahead.

ERIN AUSTIN, Vice-President of Outside Plant Engineering and Planning: 1303.04, not a huge issue but it's what was added here, pole owner shall issue authorization of access in writing within 45 days. It makes it confusing because it basically says if we have, you know, 45 days that we have to give back to basically that's what they're getting at here. We have 45 days to get

back to the applicant. But when it says pole owner shall issue authorization of access in writing, and then goes on to say if it's not granted within 45 days the owner shall confirm a denial, blah, blah, blah, it goes on and on. But it just confuses it because when it says you shall issue authorization of access, it makes it sound like we are going to go out and we are going to survey and automatically give you authorization of access which is not necessarily the case. If there's nothing to change on the poles, no movements to make no make-ready work that is absolutely the case, but if there's make-ready work involved, we would respond back to them within 45-days, yes, but we would respond back not with authorization to attach but with, you know, make-ready estimate. So I think this addition just makes things very confusing and that was made since the last meeting that we had. I think it confuses the issue.

It goes on to explain it a little bit better afterwards, but I think it just makes it more confusing.

MS. DAVIS: And right on its face, pole owner shall issue authorization of access. It suggests that we have to issue authorization.

MS. AUSTIN: Within the 45 days.

MS. DAVIS: Within the 45 days. I don't know that we disagree with what they're doing, but it's confusing.

MS. AUSTIN: Right. Just makes it confusing. That's all. I think -- yeah, we probably agree with the intent of getting back to them within 45 days. It just makes it sound like no matter what, we have to authorize within 45 days.

VICE-CHAIRMAN PILOTTE: Either you authorize or you deny within 45 days is what they're saying.

MS. AUSTIN: Exactly.

MS. DAVIS: Authorize with changes. You may have to put a pole in here or this attachment may have to be moved. That's what it's not allowing room for.

MS. AUSTIN: And then 13 --

VICE-CHAIRMAN PILOTTE: Doesn't the rest of that paragraph do exactly what you're saying?

MS. AUSTIN: It does explain it better. Yes.

VICE-CHAIRMAN PILOTTE: The owner's denial of access shall be specific. Shall include all relevant evidence and information supporting and shall explain how such evidence and information relate to the grounds for such denial.

MS. DAVIS: It suggests we deny and we do not deny.

VICE-CHAIRMAN PILOTTE: You see --

MS. AUSTIN: The addition of that wording makes it confusing.

VICE-CHAIRMAN PILOTTE: Either you authorize or you deny. You're given a choice; is that right?

MS. AUSTIN: You authorize or you tell them what the estimate is to actually get the work done to allow them to attach. So it's not truly a denial. It's a this is what it's going to cost for

you to attach versus you're authorized to attach, go for it.

REP. SCHMIDT: Okay. I get it.

VICE-CHAIRMAN PILOTTE: But that's not a change since the last time. Yeah.

MS. DAVIS: No, it is. It is, that language that's underline.

MS. AUSTIN: That one sentence is a change. I think -- just think it makes it confusing.

VICE-CHAIRMAN PILOTTE: Okay. We'll have them address it. Thank you.

MS. AUSTIN: 1303.06 (b), numbers (1) and (2). The word material -- materially was added here, materially modifying and materially increasing the load or weight, et cetera. And I guess I just don't understand -- I need some explanation as to why that was added and what the definition is there. What does materially truly mean here and what are we getting at? Give me an example of material versus non-materially modifying.

MS. DAVIS: It suggests that they can get up on our poles and change their attachments in some circumstances and we as a pole owner would like to know what those circumstances are that are not a material modification. We don't have any idea what that would mean.

VICE-CHAIRMAN PILOTTE: Okay.

MS. DAVIS: And then our last one is in 1303.07 (c). It's on Page 4. This is -- this language changed and this in general is slightly troubling

just because, unfortunately, the regime has existed which I think these rules are trying to fix which is that people just attach a lot of -- a lot of entities, be it a municipality, be it a cable company, be it a competitor, just attach it when they feel like it without getting authorization from the pole owner. And that -- that creates a situation where the poles might be out of compliance through no-fault of FairPoint's and this provision is insisting that FairPoint be responsible for that non-compliance issue that may have been through no-fault of FairPoint's own. Somebody else may have attached. We are positive our attachments are in compliance. What we are not positive about is where everybody has attached and not sought our authorization to attach in those places. And it shifts the cost to us for cleaning up problems that other people have created.

VICE-CHAIRMAN PILOTTE: Okay. Thank you. That's it? Okay. Could I ask the Board if you're willing to address all of those issues in the revised objection response?

REP. MILLHAM: We have another speaker.

VICE-CHAIRMAN PILOTTE: I'm aware we have another speaker. I wish to have confirmation these issues will be addressed.

MS. IGNATIUS: I think we can address all of them right here. I understand you have concerns.

VICE-CHAIRMAN PILOTTE: Since we are going to be introducing, I believe, a revised objection response, then they can be addressed at that time working with them and coming so that, you know, hopefully our next session on this will not be as protracted.

MS. IGNATIUS: Thank you.

VICE-CHAIRMAN PILOTTE: Okay. Thank you very much.

REP. SCHMIDT: That's the definition of an optimist.

VICE-CHAIRMAN PILOTTE: I also have a card from Richard --

REP. SCHMIDT: Corliss? Fire Department.

VICE-CHAIRMAN PILOTTE: I'm going to have to ask you to pronounce your last name.

RICHARD WALLER, Concord Fire Department, Concord, NH: Richard Waller.

REP. SCHMIDT: Oh, okay.

MR. WALLER: I'm Lieutenant Richard Waller from the Concord Fire Department. I'm the fire alarm superintendent for the city. And today I'd like to just speak to you about the thought that the PUC may be over exceeding their authority. I have a concern with that. I can't quote you or cite any specific legal references other than Paul Sanderson has stated that in his brief. And mine is for a reason other than solely safety. I agree with Mr. Sanderson's request that if the PUC wants to have authority over municipal attachments for safety purposes only, they should specifically say that that's the extent of their regulation -- regulatory authority over municipalities. Otherwise, I believe that the municipalities have a space on that pole. We are working -- we have been working for five years with the utilities to actually have

Joint Legislative Committee on Administrative Rules

Excerpt

2009-79 – Public Utilities Commission

Utility Pole Attachments

this in writing rather than just assumed for 100 years that we have always had the space on the pole. We are close to having an agreement where the municipalities universally for Representative Schmidt, I think you mentioned something about wouldn't it be nice to have a unified way to do things. Our Committee has been working to make a unified pole license agreement that all the cities and towns theoretically would agree to use which would unify that process. And part of the pole licensing process, the municipalities are going to be potentially given a space on the pole, the municipal space to use for non-commercial governmental purposes, fire alarm, inter-municipal communications, and possibly town to town emergency communications for emergency management at the state or federal level. We are looking at having official rights on the pole given to us by these agreements and my concern is that the PUC might determine that that is discriminatory usage of the pole and they might decide that the language that is contained in the agreement between the municipalities and utilities is not legal. And I don't believe that that should be handled at the PUC. I believe that would be something that should be handled in the courts.

VICE-CHAIRMAN PILOTTE: I believe somebody would definitely agree with you if they decided to introduce that as a case, I'm sure. It would not -- they would be taken to court over it.

MR. WALLER: I guess what I'm asking for is that if -- and I believe from what I've read in the federal pole attachment dispute laws, municipalities were specifically left out as attaching entities that were to be adjudicated at the FCC. I don't disagree. I believe that attachments should include every attachment on a

pole as a way to describe what's on a pole, but I do not believe that attachment disputes should be handled at the PUC for municipalities because we are not a utility. We are a private municipal attachment on that pole for municipal purposes, non-competitive. And so they should only take the authority that's given to them. That's all I have.

VICE-CHAIRMAN PILOTTE: And, hopefully, there'd be one person, one place to go to get answers and that might end up being the PUC. I mean, you know, eventually. But that's not here for us to decide. That would be policy. Okay.

MR. WALLER: Thank you.

VICE-CHAIRMAN PILOTTE: Yes, sir. Do I have a card? It is somewhat late in the process. I really would have appreciated and thought you would be much more considerate of the Committee.

PAUL PHILLIPS, ESQ., Primmer, Piper, Eggleston & Cramer, Littleton, NH: I would take one minute of your time, sir.

VICE-CHAIRMAN PILOTTE: Good.

MR. PHILLIPS: My name is Paul Phillips. I'm an attorney representing the eight incumbent independent telephone companies. Testified previously before the Committee on September 3rd. I have one clarification and one small correction to the PUC's response.

VICE-CHAIRMAN PILOTTE: All in a minute?

MR. PHILLIPS: They're very small, sir. I just wanted to note for the record that in the list of the respondents to the PUC's drafts, the PUC

omitted the testimony you provided on September the 3rd. We have not provided written comments, but we did obviously provide oral testimony. And then the slight correction I have is on Page 5 of the October 16th response. Toward the middle there, the paragraph that begins FairPoint's aim is to maintain. At the end of that paragraph the second to last sentence says FairPoint and other incumbent telephone companies would like to charge new attachers 100% of the cost to move their lines to make space available. That's not accurate. We have actually filed comments since last December with the PUC supporting a 50/50 split of those costs. And in the draft that's before you now the PUC has gone with the 60/40 split, 60% to us, 40% to the other attacher. We support that rule. We have never advocated a 100% rule. I just want to make that correction and I'm done.

VICE-CHAIRMAN PILOTTE: Thank you.

REP. SCHMIDT: Thank you very much.

REP. CASEY: You're forgiven.

VICE-CHAIRMAN PILOTTE: If there are no questions from the Committee members, we are open to a motion.

REP. CASEY: Too technical for me.

** REP. TAYLOR: So moved.

VICE-CHAIRMAN PILOTTE: At this point I'll call on Attorney Eaton. Attorney Eaton, it would seem to me from what all the -- what we've heard that we are likely to be aiming to a revised objection.

ATTORNEY EATON: Hm-hum.

VICE-CHAIRMAN PILOTTE: Is that correct?

ATTORNEY EATON: Yes.

VICE-CHAIRMAN PILOTTE: How would those be phrased, on what basis, and how do we identify the specifics that were brought to our attention today?

ATTORNEY EATON: Well, right now --

VICE-CHAIRMAN PILOTTE: Are we restricted to only those that have been brought to us in September?

ATTORNEY EATON: No, you're not, not with a revised objection.

VICE-CHAIRMAN PILOTTE: Okay. That's good.

ATTORNEY EATON: Okay. Just to confirm the rule numbers involved. If Amy Ignatius could come down, maybe we could confirm which rules we are talking about here.

VICE-CHAIRMAN PILOTTE: Okay. Hopefully, other folks will be listening in. That's the way the objection response is going to be.

ATTORNEY EATON: If I may?

VICE-CHAIRMAN PILOTTE: Yes.

ATTORNEY EATON: Amy, I think with reference to JLCAR staff comments there were four rules. And as I understand it, the Revised Objection would be basically on the grounds addressed in those staff comments that you would take another look at those; 1301.01, 1304.05, 1303.04, and 1304.06 (a) (1) and

(2) and also (b), paren B. Are we right on that?

MS. IGNATIUS: Yes.

ATTORNEY EATON: Okay. I think it was just those four out of Attorney Lucas' comments that the Commissioner had indicated the -- that they would address. So there are those comments remaining from the preliminary objection that they would address in their Revised Objection Response.

The other ones I think were from FairPoint, at least with specific rule numbers were identified where the Commission seemed to be willing to make changes. And I have 1303.07 (c), where FairPoint had -- was I guess opposition of the changes. Excuse me. 1303.07 (a).

MS. IGNATIUS: I would agree that's the Telcordia issue.

ATTORNEY EATON: The reference to the Blue Book?

MS. IGNATIUS: Yes.

ATTORNEY EATON: That was 1303.07 (a); 1303.12, deletion of references to prepayments.

REP. SCHMIDT: Yes.

ATTORNEY EATON: I'm afraid the numbers are going to bounce around here 'cause that's how the testimony came in. 1303.04, the addition of the sentence about pole owners issuing authorization of access in writing within the 45 days was unclear to them. 1303.06 (b), the use of the word materially and what that meant.

VICE-CHAIRMAN PILOTTE: In both (1) and (2).

ATTORNEY EATON: In both (b) (1) and (2). And 1303.07 (c). In this case I didn't have their deliberate concern but just that they were opposed to the changes. Did you have that number, also?

MS. IGNATIUS: Yes.

ATTORNEY EATON: Okay.

VICE-CHAIRMAN PILOTTE: Okay. Those would be the items that will be workable.

ATTORNEY EATON: Those last ones I identified are based on public testimony. The others are based on the four rules that I first mentioned with staff comments. And as long as the Commission wants to make revised objection to those rules, that's all you're going to see changed in the response or potentially changed, I should say.

VICE-CHAIRMAN PILOTTE: Have we -- have we slid by any that --

MS. DAVIS: Yes. Brought up the 1303.09, 1303.10 and 1303.11. Those were brought up as objections last time but the PUC's response was that they don't think our objection warrants changing it; but we still object to those.

VICE-CHAIRMAN PILOTTE: That's --

MS. DAVIS: I brought those up in the testimony.

VICE-CHAIRMAN PILOTTE: Okay.

ATTORNEY EATON: Unless the Commission is willing to add those, a request is their request.

VICE-CHAIRMAN PILOTTE: Then their response already to that. Okay.

ATTORNEY EATON: Would you look at those again then?

MS. IGNATIUS: Nine, 10 and 11?

ATTORNEY EATON: Yes.

MS. IGNATIUS: I don't --

VICE-CHAIRMAN PILOTTE: The whole issue of boxing and extension arms and location of the attachments.

MS. IGNATIUS: I don't have any expectation that we're prepared to change those, but I don't want to sound unwilling to read it one more time.

VICE-CHAIRMAN PILOTTE: You will look at it.

MS. IGNATIUS: Yes, sir.

VICE-CHAIRMAN PILOTTE: Okay. Thank you.

REP. SCHMIDT: Thank you. I agree. You should look at it.

VICE-CHAIRMAN PILOTTE: Okay. So if someone were so inclined as to make that motion.

** REP. SCHMIDT: I would be happy to make that motion, Mr. Chair.

VICE-CHAIRMAN PILOTTE: Representative Schmidt proposes a Revised Objection based on identified by staff. Okay. And is there a second?

SEN. CILLEY: I'll second it.

VICE-CHAIRMAN PILOTTE: Seconded by Senator Cilley. Any questions or comments? All in favor? Opposed? Seeing none. Thank you.

*** {MOTION ADOPTED}

VICE-CHAIRMAN PILOTTE: Could I have a motion to recess, please?

REP. SCHMIDT: I will move that.

REP. CASEY: Second.

VICE-CHAIRMAN PILOTTE: Schmidt moves and seconded by Casey. All in favor? Opposed? Thank you very much.

*** {MOTION ADOPTED}

(Recess taken at 2:34 p.m.)

CERTIFICATION

I, Cecelia A. Trask, a Licensed Court Reporter-Shorthand, do hereby certify that the foregoing transcript is a true and accurate transcript from my shorthand notes taken on said date to the best of my ability, skill, knowledge and judgment.

Cecelia A. Trask, LSR, RMR, CRR
State of New Hampshire
License No. 47



