

THE STATE OF NEW HAMPSHIRE

Before the

PUBLIC UTILITIES COMMISSION

Time Warner Entertainment Company L.P. d/b/a
Time Warner Cable,

Petitioner,

v.

Public Service Company of New Hampshire,

Respondent.

Docket No: DT 12-084

SETTLEMENT AGREEMENT ON PSNH POLE ATTACHMENT RATES

This Settlement Agreement on PSNH Pole Attachment Rates ("**Agreement**") is made and entered into by and between Public Service Company of New Hampshire ("**PSNH**"), and Time Warner Entertainment Company, L.P. d/b/a Time Warner Cable ("**Time Warner Cable**"), Comcast Cable Communications Management, LLC, Comcast of New Hampshire, Inc., Comcast of Massachusetts/New Hampshire, LLC and Comcast of Maine/New Hampshire, Inc. ("**Comcast**"), and segTEL, Inc. ("**segTEL**"), collectively (including their affiliates) referred to herein as the "**Parties.**"

WHEREAS PSNH commenced lawsuits against Time Warner Cable and Comcast of New Hampshire, Inc., Comcast of Massachusetts/New Hampshire, LLC and Comcast Of Maine/New Hampshire, Inc., for pole attachment rate changes claimed to be due for attachments to PSNH poles ("the Lawsuits");

WHEREAS Time Warner Cable filed a Petition for Resolution of Dispute against PSNH, dated March 30, 2012, in the New Hampshire Public Utilities Commission ("PUC"), Docket No. 12-084 (the "Proceeding"), requesting, *inter alia*, that the PUC find that the Federal Communication Commission ("FCC") Cable Rate Formula applies to all attachments to PSNH

poles by cable operators, regardless of the communications services provided over such attachments since December 12, 2009;

WHEREAS Time Warner Cable and PSNH disputed the rate applicable to attachments to PSNH poles by cable operators, regardless of the communications services provided over such attachments (the "Dispute");

WHEREAS the PUC entered an Order, dated May 2, 2012, requiring, inter alia, any party seeking to intervene in the Proceeding to submit a Petition to Intervene by May 21, 2012;

WHEREAS Time Warner Cable caused notice of the prehearing conference to be timely published;

WHEREAS Comcast, segTEL and Unitil Energy Systems, Inc. ("Unitil") submitted a petitions to intervene in the Proceeding;

WHEREAS there was a pre-hearing conference on May 24, 2012;

WHEREAS the PUC entered an Order, dated July 3, 2012, granting the petitions to intervene of Comcast, Unitil, and segTEL, and holding that the PUC will not assert jurisdiction over retrospective rate issues, and that this Proceeding shall be governed by the 360-day timeframe set forth in in 47 U.S.C. 224;

WHEREAS the Parties conducted discovery;

WHEREAS Comcast, Time Warner Cable, PSNH and segTEL pre-filed direct testimony in the Proceeding;

WHEREAS eleven members of the New Hampshire Telephone Association¹ ("NHTA") intervened in the Proceeding on August 20, 2012;

WHEREAS the Parties have agreed to settle the Dispute on the terms and conditions set forth in this Agreement, which terms and conditions are supported by PUC staff;

¹ The eleven members were Bretton Woods Telephone Company, Inc., Dixville Telephone Company, Dunbarton Telephone Company, Inc., Granite State Telephone, Inc., Northern New England Telephone Operations, LLC d/b/a FairPoint Communications – NNE, Northland Telephone Company of Maine, Inc. d/b/a FairPoint Communications -Northland Telephone Company of Maine, TDS Telecom/Hollis Telephone Company, Inc., TDS Telecom/Kearsarge Telephone Company, TDS Telecom/Merrimack County Telephone Company, TDS Telecom/Union Telephone Company, Inc., and TDS Telecom/Wilton Telephone Company, Inc.
(W3408294.1)

NOW THEREFORE, in consideration of the terms and conditions contained in this Agreement, the Parties agree to the following terms and conditions:

1. **Settlement of Dispute.** For the period January 1, 2013 going forward, the Parties agree to the following Unified Pole Rent Formula to be applied to all attachments to PSNH poles by cable television service providers and competitive local exchange carriers pursuant to PUC 1304.06(a):

Pole Attachment Rate = $0.44 \times \text{SF} \times \text{Net Cost of Bare Pole}^2 \times \text{Carrying Charge Rate}^2$

Where,

$$\text{Space Factor ("SF")} = \frac{1^3 + \left[2/3 * \frac{\text{Unusable Space}^4}{\# \text{ of Attachers}^5} \right]}{\text{Pole Height}^4}$$

The signatories to this Agreement agree that they shall not challenge the lawfulness of the Unified Pole Rent Formula in court, before the PUC or in any other forum.

Notwithstanding any provisions of any and all existing pole attachment agreements between PSNH and the attaching parties covered by this settlement agreement which require advance written notice to be given by PSNH of a change in pole attachment fees and charges, the pole attachment rate formula specified herein shall be in effect and chargeable by PSNH commencing on January 1, 2013 for all attachments of the attaching parties covered by this settlement agreement, without the necessity of any further or additional written notice by PSNH.

² The Net Cost of Bare Pole and the Carrying Charge Rate shall be calculated in accordance with now present FCC policies and rebuttable presumptions.

³ Space Occupied.

⁴ The amount of Unusable Space is presumed to be 24 feet. The Pole Height is presumed to be 37.5 feet. These presumptions may be rebutted by either party before the NH Public Utilities Commission.

⁵ Commencing with the 2013 pole rate calculation this value shall be no less than 2.7. Commencing January 1, 2014, this 2.7 value may be challenged as too low by petition to the NH Public Utilities Commission, provided however, that this value shall not be more than 3 prior to January 1, 2016.

{W3408294.1}

2. **Other Dealings.** This Agreement will in no way affect the rights or obligations of the Parties with respect to any other claims, controversies, or lawsuits, business dealings or contractual obligations between them that are unrelated to this Agreement.

3. **Consultation with Counsel.** The Parties acknowledge that they have consulted with their separate counsel.

4. **Modification of Agreement.** This Agreement may be amended, revoked, or modified only upon a written agreement executed by the affected Parties. No waiver of any provision of this Agreement will be valid unless it is in writing and signed by the person or entity against whom such waiver is charged.

5. **Severability.** Should any provision of this Agreement be illegal or invalid, the validity of the remaining parts, terms, or conditions shall not be effected thereby and said illegal or invalid part, term, or condition shall be deemed not to be a part of this Agreement.

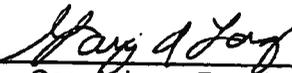
6. **Entire Agreement.** This Agreement sets forth the entire Agreement between the Parties regarding the terms and conditions set forth herein, and supersedes all prior negotiations, understandings, and agreements other than the individually negotiated settlement agreements entered into by PSNH with certain of the Parties that concern the Lawsuits. The Parties expressly state that they have not relied on any statement or promise by any other prior to entering into this Agreement other than those statements or promises that are expressly set forth in this Agreement. This Settlement Agreement shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in these proceedings is true or valid. This Settlement Agreement is expressly conditioned upon the PUC's acceptance of all of its provisions without change or condition. If such acceptance is not granted, the settlement agreement shall be deemed to be null and void and without effect, and shall not constitute any part of the record in this proceeding nor be used for any other purpose. The Parties and Staff agree to support approval of this Settlement Agreement before the PUC and the Parties and Staff shall not oppose this Settlement Agreement before any regulatory

agencies or courts before which this matter is brought. This Agreement may be executed in counterparts, each of which shall be considered an original. Notwithstanding the foregoing, this Agreement does not provide and is not intended to provide non-signatory third parties with any remedy, claim, liability, obligation, cause of action, or other privilege. Furthermore, it has no precedential effect for any non-signatory third parties, and will not prejudice any other issues not specifically resolved through the Agreement.

7. **Governing Law/Jurisdiction.** This Agreement shall be construed and enforced in accordance with the laws of the State of New Hampshire, without regard to conflict of law principles. The terms of this agreement shall govern the calculation of pole attachment rents in accordance with PUC 1304.06(a) notwithstanding any other provision of federal, state or local law. If necessary, this Agreement may be enforced at the PUC. The Parties hereby submit to the jurisdiction of the PUC for purposes of enforcement in that forum.

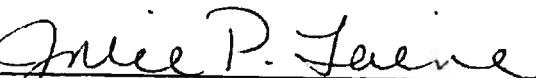
8. **Authority to Execute Agreement.** The undersigned hereby represent and warrant that they have the authority to execute this Agreement in accordance with the terms and conditions set forth herein.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: 
Gary A. Long, President
Public Service Company of New Hampshire
Duly Authorized

Date: Nov 13, 2012

**TIME WARNER ENTERTAINMENT COMPANY, L.P.
D/B/A TIME WARNER CABLE**

By: 
Julie Laine, Group Vice President
and Chief Counsel, Regulatory
Time Warner Cable Inc.
Duly Authorized

Date: Nov 13, 2012

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION STAFF

By: *Alexander F. Speidel*
Alexander F. Speidel
Staff Attorney, NHPUC

Date: 11/13/2012

**COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC,
COMCAST OF NEW HAMPSHIRE, INC.,
COMCAST OF MASSACHUSETTS/NEW HAMPSHIRE, LLC AND
COMCAST OF MAINE/NEW HAMPSHIRE, INC.**

By: *Mark Reilly*
Mark Reilly Senior Vice President
Government Affairs, Comcast Northeast Division
Duly Authorized

Date: 11/13/12

segTEL, Inc.,

J
JEREMY KATZ
Duly Authorized

Date: Nov 13 2012