

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

Public Service Company of New Hampshire,

Plaintiff

vs.

Time Warner Entertainment Company, L.P.,

Defendant

Civil Action No. 12-cv-98-PB

**MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION,  
OR IN THE ALTERNATIVE, MOTION TO STAY PROCEEDINGS**

1. Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant Time Warner Entertainment Company, L.P. d/b/a Time Warner (“Time Warner Cable”) respectfully moves this Court for an order dismissing Plaintiff’s Complaint because Plaintiff failed to exhaust an administrative remedy required by statute, which precludes subject matter jurisdiction in any court. In the alternative, Time Warner Cable moves this Court to dismiss or stay these proceedings under the doctrine of primary jurisdiction.

2. This case is about the lawfulness of rental fees for attachments made by Time Warner Cable to utility poles owned by Plaintiff Public Service Company of New Hampshire (“PSNH”). The same dispute is now pending before the New Hampshire Public Utilities Commission (“PUC”), where Time Warner Cable filed a Petition for Resolution of Pole Attachment Dispute on March 30, 2012. A true copy of that Petition, along with an affidavit, exhibits thereto, and appendices, is submitted herewith as Attachment A to the Affidavit of David A. Anderson, Esq.

3. As more fully detailed and demonstrated below, the parties dispute arises from PSNH's imposition of higher rent for Time Warner Cable pole attachments as a consequence of Time Warner Cable introducing competitive voice service (Voice over Internet Protocol or "VoIP") over its cable systems in 2005. This Court lacks subject matter jurisdiction over this case because PSNH was required to seek PUC resolution of its dispute with Time Warner Cable over the lawfulness of those higher rates. But because PSNH failed to exhaust a statutorily required administrative remedy, its Complaint must be dismissed.

4. Under a New Hampshire statute adopted in 2007, where "a pole owner is unable to reach agreement with a party seeking pole attachments, the [PUC] *shall* regulate and enforce rates, charges, terms and conditions for such pole attachments. . . . *to provide that such rates charges, terms and conditions are just and reasonable.*" RSA 374:34-a, II (emphasis added). In addition, the PUC "shall have the authority to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments." RSA 374:34-a, VII.

5. The PUC has detailed rules implementing these provisions, including standards for "determining just and reasonable rates for the attachments of . . . cable television service providers to poles owned by . . . electric utilities." N.H. Code of Admin. Rules PUC 1304.06. *See also* N.H. Code Admin. Rules PUC1301.01 – 1304.08 (detailed rules for regulation of utility pole attachments by cable and communications companies). The Legislature has further provided that the exclusive remedy for parties to challenge the PUC's decisions in such adjudicative proceedings is to appeal from the PUC to the New Hampshire Supreme Court. RSA 541:2 ("Uniform Procedure"); 541:6 ("Appeal"); 541:22 ("Remedy Exclusive"). In short, "[n]o proceeding other than the appeal herein provided for shall be maintained in any court of this state

to set aside, enjoin the enforcement of, or otherwise review or impeach any order of the commission, except as otherwise specifically provided.” RSA 541:22.

6. PSNH filed its state court Writ of Summons and Verified Declaration (hereafter, “Complaint”), styled as a simple breach of contract matter. But “[w]here relief is available from an administrative agency, the plaintiff is ordinarily required to pursue that avenue of redress before proceeding to the courts; and until that recourse is exhausted, suit is premature and must be dismissed.” *Reiter v. Cooper*, 507 U.S. 258, 269 (1993) (explaining distinction in doctrines of exhaustion of administrative remedies and primary jurisdiction) (citations omitted); *see also Boston Gas Co. v. FERC*, 575 F.2d 975, 977 (1st Cir. 1978) (statutory procedures for claims of unfair energy practices were “a jurisdictional prerequisite to judicial review”) (internal citations and quotes omitted).

7. In addition, Section 3.1.3 of the agreement on which PSNH bases its contract claims specifies that, if Time Warner Cable deems any rate changes to be unacceptable, it shall “submit[] the issue to the regulatory body asserting jurisdiction over this Agreement for decision.” PSNH has not complied with contractual provisions for rate increases in any event, but this provision demonstrates the parties’ understanding that disputes over pole attachment rates are a matter for expert agency resolution.

8. The burden of proof on a Rule 12(b)(1) motion to dismiss for lack of jurisdiction is on Plaintiff. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). Facts documented in the Affidavit of Julie Patterson Laine and exhibits thereto (appended to the Affidavit of David A. Anderson, Esq.) demonstrate that this is not a collections case by any means. Time Warner Cable has paid PSNH all sums due for traditional cable system attachments – over \$1.2 million – and the parties’ central dispute presents a case of first

impression for the PUC: whether, under New Hampshire law, a utility company may impose a surcharge for cable system pole attachments in areas where the cable system provides VoIP service in addition to traditional cable television and broadband Internet access services.

PSNH's Complaint in fact presents the important public policy question of how a surcharge for cable system attachments used to provide VoIP service affects broadband deployment and competitive voice service offerings in the state. The New Hampshire Legislature has placed these issues within the sole jurisdiction of the PUC, as detailed in Time Warner Cable's memorandum supporting this motion.

9. This Court should therefore dismiss this case without prejudice pursuant to Fed. R. Civ. P. 12(b)(1) because the exclusive forum for this dispute is the New Hampshire Public Utility Commission, where it is currently pending. There is no issue to be resolved in this case outside the case before the PUC.

10. In the alternative, even if the PUC were not the exclusive forum, this Court should dismiss or stay the matter under the doctrine of primary jurisdiction. When a claim pending before a court "requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body," the doctrine of primary jurisdiction mandates suspension of judicial proceedings "pending referral of such issues to the administrative body for its views." *United States v. Western Pac. R.R. Co.*, 352 U.S. 59, 63-64 (1956). The purpose of the primary jurisdiction doctrine is to "coordinate administrative and judicial machinery" and to "promote uniformity and take advantage of agency expertise." *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575, 580 (1st Cir. 1979). When the issues raised in a case have been "placed within the special competence of the administrative body," and when filed cases pose a risk of inconsistent outcomes between courts and agencies on matters of

regulatory policy, a court may dismiss a complaint without prejudice. *Reiter v. Cooper*, 507 U.S. 258, 268-69 (1993). Alternatively, a court may suspend the judicial process to afford an opportunity for the administrative body to act on the case. *Id.*

11. Although PSNH's Complaint avoids all mention of Time Warner Cable's provision of VoIP service, the issue of defining just and reasonable rates for pole attachments is one placed within the special competence of the PUC. A decision by this (or any) Court risks contradicting the PUC's resolution of the matter. Ratemaking issues are not within the usual range of issues handled by courts, and the expert administrative agency is better equipped to resolve the public policy and technical issues for the entire state. For these reasons, as more fully articulated in Time Warner Cable's supporting Memorandum, this Court should dismiss or stay this case under the doctrine of primary jurisdiction.

12. Counsel respectfully requests oral argument on this Motion if the Court agrees it would aid in its understanding of the issues presented.

WHEREFORE, for all of the foregoing reasons, Time Warner Cable respectfully requests that this Court dismiss the case in its entirety or, in the alternative, that this Court stay the action pending resolution of the pending proceedings at the New Hampshire Public Utilities Commission.

Respectfully submitted,

**TIME WARNER ENTERTAINMENT L.P.**  
**d/b/a TIME WARNER CABLE**

By its attorneys,  
Pierce Atwood LLP

Dated this 2<sup>nd</sup> day of April, 2012.

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**Certificate of Service**

I hereby certify that a copy of the foregoing Motion to Dismiss for Lack of Subject Matter Jurisdiction, or in the Alternative, Motion to Stay Proceedings, was served on the following on this 2<sup>nd</sup> day of April, 2012, and in the manner specified herein:

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S  
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**TIME WARNER ENTERTAINMENT L.P.  
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Defendant Time Warner Entertainment Company, L.P. d/b/a Time Warner (“Time Warner Cable”) respectfully submits this Memorandum of Law in Support of its Motion to Dismiss for Lack of Subject Matter Jurisdiction, or to Stay Proceedings.

**I. INTRODUCTION**

This case is about rental fees for attachments made by Time Warner cable systems to utility poles owned by Plaintiff Public Service Company of New Hampshire (“PSNH”). The same dispute, between the same parties, is now pending before the New Hampshire Public Utilities Commission (“PUC”), where it belongs under the state’s law governing utility pole attachments as well as under the contract on which PSNH bases its claims.

Under a New Hampshire statute adopted in 2007, where “a pole owner is unable to reach agreement with a party seeking pole attachments, the [PUC] shall regulate and enforce rates, charges, terms and conditions for such pole attachments. . . to provide that such rates charges, terms and conditions are just and reasonable.” RSA 374:34-a, II. In addition, the PUC “shall

have the authority to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments.” RSA 374:34-a, VII. The PUC has detailed rules implementing these provisions, including standards for “determining just and reasonable rates for the attachments of . . . cable television service providers to poles owned by . . . electric utilities.” N.H. Code of Admin. Rules PUC 1304.06. The Legislature has further provided that the exclusive remedy for parties to challenge the PUC’s decisions in such adjudicative proceedings is to appeal from the PUC directly to the New Hampshire Supreme Court. RSA 541:2 (“Uniform Procedure”); 541:6 (“Appeal”); 541:22 (“Remedy Exclusive”). In fact, as detailed below, Section 3.1.3 of the agreement on which PSNH bases its contract claims specifies that, if Time Warner Cable deems any rate changes to be unacceptable, it shall “submit[] the issue to the regulatory body asserting jurisdiction over this Agreement for decision.”

PSNH’s Writ of Summons and Verified Declaration (hereafter, “Complaint”) alleges that Time Warner Cable owes PSNH additional money as rent for “its cable lines which are attached to PSNH’s utility poles . . . in the State of New Hampshire pursuant to a Pole Attachment Agreement dated September 6, 2004.” But this is not a collections case. Time Warner Cable has paid PSNH all sums due for traditional cable system attachments – over \$1.2 million – and the parties’ only dispute presents a case of first impression for the PUC: whether, under New Hampshire law, a utility company may impose a surcharge for cable system pole attachments in areas where the cable system provides Voice over Internet Protocol (“VoIP”) service in addition to traditional cable television and broadband Internet access services. More broadly, the case presents the important public policy question of how a surcharge for cable system attachments used to provide VoIP service affects broadband deployment and competitive voice service

offerings in the state. The New Hampshire Legislature has placed these issues within the sole jurisdiction of the PUC, as detailed below.

On March 30, 2012 Time Warner Cable filed a petition asking the PUC to find that PSNH may not impose higher pole attachment fees penalizing Time Warner Cable and its customers and, as a result, harming competition for voice services and the prospects for the deployment of broadband services. *See* Affidavit of David A. Anderson, Esq., at Attachment A (copy of *Time Warner Entertainment Company L.P. d/b/a Time Warner Cable v. Public Serv. Co.*, Petition for Resolution of Dispute, with supporting documents)(“PUC Petition”). Specifically, Time Warner Cable asks the PUC to hold that PSNH’s VoIP surcharge on Time Warner Cable’s pole attachments are “unjust and unreasonable” rates within the meaning of RSA 374:34-a and the PUC’s rules.<sup>1</sup> PUC Petition at 32-33 (Relief Requested). This Court should therefore dismiss this case without prejudice pursuant to Fed. R. Civ. P. 12(b)(1) because the exclusive forum for this dispute is the New Hampshire Public Utility Commission, where it is currently pending. There is no issue to be resolved in this case other than the question before the PUC.

In the alternative, even if the PUC were not the exclusive forum, this Court should dismiss or stay the matter under the doctrine of primary jurisdiction. Although PSNH’s Complaint avoids all mention of Time Warner Cable’s provision of VoIP service, the issue of defining just and reasonable rates for any utility is one placed within the special competence of the PUC. A decision by this (or any) Court on the regulatory and policy issue that is central to

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<sup>1</sup> Subsumed within the general issue of whether a VoIP surcharge is “unjust and unreasonable” are questions of timing under differing rules that applied to New Hampshire pole attachments (e.g., the PUC rules now in effect and federal regulations in effect prior to December 2009, when the PUC adopted its current rules). *See, e.g.*, PUC Petition at 11-12 (explaining different sets of rules applicable for different time periods).

this case risks contradicting the PUC's eventual resolution of the matter. Ratemaking issues are not within the usual range of issues handled by courts, and the expert administrative agency is better equipped to resolve the public policy and technical issues for the entire state.

## **II. REGULATORY AND FACTUAL BACKGROUND**

Utility pole attachments are subject to an overriding federal statute, 47 U.S.C. § 224, which gives the Federal Communications Commission authority to regulate pole attachment rates terms and conditions except in states that take prescribed measures to exercise jurisdiction over those issues. As detailed below, New Hampshire displaced the FCC's authority consistent with this law, and regulates utility pole attachment rates terms and conditions in this state.

### **A. Pole Attachment Regulation under the Federal Pole Attachment Act.**

In 1998, the FCC determined that it would not allow utility pole owners to impose a surcharge on cable operators simply because they had introduced then-new broadband Internet access services over their cable systems. As the Supreme Court aptly observed in affirming that decision:

Since the inception of cable television, cable companies have sought the means to run a wire into the home of each subscriber. They have found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles. Utilities, in turn, have found it convenient to charge monopoly rents.

*NCTA v. Gulf Power Co.*, 534 U.S. 327, 330 (2002). To address the problem of excessive pole rents, in 1978, Congress enacted the Pole Attachment Act (now codified, as amended, at 47 U.S.C. § 224). *See FCC v. Florida Power Corp.*, 480 U.S. 245, 247 (1987) (further discussing Congressional intent in passing Pole Attachment Act to provide “a solution to a perceived danger of anticompetitive practices by utilities in connection with cable television service”). PSNH's Complaint is simply another in a long line of utility company efforts to extract excessive and

unjustified pole rents from cable companies that use their cable systems to provide innovative services (like VoIP) in addition to traditional cable services.<sup>2</sup>

Under the Pole Attachment Act, Congress established a system whereby jurisdiction over pole attachment matters would be conferred in the first instance with the Federal Communications Commission (“FCC”), or alternatively with individual state public service commissions (“PSCs”), when the individual State affirmatively certified to the FCC that it would regulate such matters. Section 224(b) of the federal Communications Act provides that “the [Federal Communications] Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable. . . .” 47 U.S.C. § 224(b)(1). However, Section 224(c) provides that “in any case where [pole attachment] matters are regulated by a State” the FCC will not have jurisdiction over such matters.<sup>3</sup> Instead, when a state PSC certifies that it will regulate pole attachment matters, by operation of law, it assumes jurisdiction and supplants federal jurisdiction over such matters.

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<sup>2</sup> See, e.g., *Heritage Cablevision Assocs. of Dallas, L.P. v. Tex. Util. Elec. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 7099 ¶ 3 (1991) (striking down utility effort to charge “a regulated rate to attach facilities employed strictly to provide conventional cable television services, and a separate, substantially higher rate to attach equipment used to provide nonvideo broadband communications services such as data transmission”), *recon. dismissed*, 7 FCC Rcd 4192 (1992), *aff’d*, *Tex. Utils. Elec. Co. v. FCC*, 997 F.2d 925 (D.C. Cir. 1993).

<sup>3</sup> The statute provides that “a State shall not be considered to regulate the rates, terms and conditions for pole attachments . . . unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments.” 47 U.S.C. § 224(c)(3). Also, any “State which regulates the rates, terms and conditions for pole attachments shall certify to the Commission” that it regulates such attachments, and that in doing so, “the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interest of the consumers of the utility services.” 47 U.S.C. § 224(c)(2)(B). The FCC’s rules contain a similar provision. 47 C.F.R. § 1.1414.

In order to secure authority over pole attachment matters, the State must declare that it regulates the rates, terms and conditions of pole attachments;<sup>4</sup> that it has the authority to regulate such rates, terms and conditions, and that it will consider the public's interest in so regulating.<sup>5</sup> Furthermore, to perfect its jurisdiction, the State must promulgate rules implementing the State's regulatory authority over pole attachment matters,<sup>6</sup> and take final action as to individual pole attachment matters in a prompt timeframe.<sup>7</sup>

Thus, under Section 224, Congress established a system of reverse preemption, conferring jurisdiction on the FCC, unless a state affirmatively asserts jurisdiction (and certifies as such to the FCC) over pole attachment matters. This statutory scheme is based on Congress' long-standing practice of delegating matters of a technical nature that require special expertise to designated agencies that are better equipped to confront and decide technical, detailed matters unique to a particular industry.

**B. The PUC Has Assumed Jurisdiction over Pole Attachments Consistent With Congressional Intent.**

Consistent with Congressional intent and the specific requirements of 47 U.S.C. § 224(c), New Hampshire has assumed jurisdiction over pole attachment rates, terms and conditions within the state. In 2007, New Hampshire passed RSA 374:34-a, which declares in part that “whenever a pole owner is unable to reach agreement with a party seeking pole attachments, the [PUC] shall regulate and enforce the rates . . . for such pole attachments with regard to the types of attachments regulated under 47 U.S.C. section 224, to provide that such rates . . . are just and reasonable.” RSA 374:34-a, II. In addition, the statute specified that the PUC “shall have the

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<sup>4</sup> 47 U.S.C. § 224(c)(2)(A).

<sup>5</sup> *Id.* at (c)(2)(B).

<sup>6</sup> *Id.* at (c)(3)(A).

<sup>7</sup> *Id.* at (c)(3)(B).

authority to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments.” RSA 374:34-a, VII.

The PUC has explained that “[u]pon the enactment of RSA 374:34-a, New Hampshire certified to the FCC that it has the authority to regulate utility poles and their attachments.” NHPUC Response to Preliminary Objection Notice Number 2009-79 (Oct. 16, 2009) (“*PUC Response*”) (Appendix 1 hereto). The PUC also adopted detailed administrative rules governing pole attachments. N.H. Code Admin. Rules PUC (“PUC R.”) 1301.01 – 1304.08. Among its pole attachment rules, the PUC adopted a rule explicitly authorizing petitions where a person requesting a pole attachment is “unable, through good faith negotiation, to reach agreement with the owner or owners of a pole or poles,” PUC R. 1304.02, and another authorizing a party to an existing agreement to petition the PUC for the resolution of disputes arising under the agreement. PUC R. 1304.03.<sup>8</sup> “As a result, in accordance with federal law, RSA 374:34-a and PUC 1300 *establish the Commission’s jurisdiction over the rates, terms and conditions of utility pole attachments and any disputes concerning pole attachments that may arise under that statute and those rules.*” *PUC Response* at 3 (italics added). And, as detailed below, state law allows judicial involvement in any such disputes only after the PUC has ruled, and then only through an appeal to the New Hampshire Supreme Court. *See* RSA 541:6 & 541:22.

**C. PSNH Claims a Surcharge for Time Warner Cable’s VoIP Service.**

PSNH’s Complaint does not explicitly mention that it seeks additional pole attachment fees solely to collect a new, higher surcharge on Time Warner Cable’s pole attachments used to provide residential VoIP service over its cable systems. Just a few facts from Time Warner Cable’s petition to the PUC, however, leave no doubt that PSNH is demanding a VoIP surcharge.

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<sup>8</sup> The PUC’s rules for pole attachment proceedings are submitted herewith as Appendix 2. Rules governing adjudications in general appear in chapter 203 of the rules and are not included.

In 2005, Time Warner Cable began to deploy a facilities-based competitive voice service for residential consumers, now branded as Digital Home Phone.<sup>9</sup> PUC Petition, Attachment A, Affidavit of Julie Patterson Laine (“Laine Aff.”) at 2 ¶ 5. Before then, Time Warner Cable had provided traditional cable television service and, broadband Internet access service to its customers in New Hampshire. Laine Aff. at 1 -2 ¶¶ 4 – 7. Also prior to 2006, Time Warner Cable paid PSNH from \$3.42 per pole up to \$8.20 per pole for attachments, depending on a variety of factors under three applicable agreements. *Id.* at 3 ¶ 11.

In 2006, however, shortly after Time Warner Cable began to provide VoIP-based services over its cable systems in New Hampshire in addition to video and Internet access services, PSNH began to assess a higher pole attachment fee, apparently on grounds that it deemed Time Warner Cable to be providing “telecommunications service.” Laine Aff. at 4 ¶ 14. Indeed, each year from 2006 to the present, PSNH has sought to change its pole attachment fees by providing invoices to TWC that included new annual per pole rent charges which were to take effect at the beginning of the next calendar year. Laine Aff. at 4 ¶¶ 14 – 16. In each invoice from 2006 to 2012, PSNH charged different attachment fees for “TV & Internet” and for “Communications.”<sup>10</sup> *Id.*

Throughout this period, Time Warner Cable objected to PSNH’s demand for payment of higher pole attachment rates based on PSNH’s apparent classification of certain attachments as “telecommunications.” Laine Aff. at 5 ¶ 17 (and attachments thereto). Consistent with its

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<sup>9</sup> This service utilizes VoIP technology to allow customers to make and receive calls using Time Warner Cable’s cable facilities, and is an “interconnected VoIP service” as defined by the FCC. 47 C.F.R. § 9.3.

<sup>10</sup> PSNH never complied with contractual requisites to increase the rates. *See, e.g.*, Laine Aff. at 3 -4 ¶¶ 12- 13.

objection, Time Warner Cable has continued to pay PSNH the rates charged for “TV &Internet” to the present. Laine Aff. at 5 ¶ 18.

These facts, documented in greater detail in Time Warner Cable’s attached petition to the PUC, leave no room for PSNH to suggest that its case is simply a collections action for a specified sum due under a contract. PSNH seeks a surcharge on Time Warner Cable’s pole attachments used to deliver VoIP service, and Time Warner refuses to pay such fees. That issue of statewide policy importance is before the PUC.

### III. ARGUMENT

The Court should dismiss PSNH’s Complaint in its entirety for either of two reasons. First, PSNH has failed to exhaust the administrative process required by statute, which gives the PUC exclusive jurisdiction to determine whether the pole attachment rates PSNH claims are just and reasonable under New Hampshire law.<sup>11</sup> Second, and in the alternative, the entire substance of the dispute between PSNH and Time Warner Cable is pending at the PUC, and this Court should dismiss or stay this matter under the doctrine of primary jurisdiction to allow the PUC to address an important issue of first impression.

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<sup>11</sup> To be sure, Time Warner Cable’s removal to this court on diversity grounds is entirely consistent with this motion. The existence of diversity jurisdiction under 28 U.S.C. § 1332 does not equate to satisfaction of all other jurisdictional requirements, including that for exhaustion of statutorily imposed administrative remedies. *See Saint Torrance v. Firststar d/b/a US Bank N.A.*, 529 F. Supp. 2d 836, 838-40 (S.D. Ohio 2007) (after removal from state court, case dismissed for lack of subject matter jurisdiction for failure to exhaust administrative remedy before state utility commission.) PSNH’s claim does not lie in any court, but at the PUC.

**A. The PUC Has Exclusive Jurisdiction Over This Dispute.**

**1. Failure to Exhaust Administrative Remedies Required by Statute Precludes Jurisdiction.**

In reviewing a jurisdictional attack under Rule 12(b)(1) that relies on facts outside the complaint, the court need not presume the truthfulness of the plaintiff's allegations; the burden of proof is on Plaintiff. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). Here, the Complaint fails to mention that the only dispute between the parties is a matter of state-wide public policy entrusted to the PUC by the Legislature. *See generally* PUC Petition. Time Warner Cable is therefore mounting a factual attack on the Court's jurisdiction on grounds that PSNH has not exhausted the administrative process required by New Hampshire law for disputes as to the reasonableness of pole attachment rates. Its claim does not lie in any court.

“Where relief is available from an administrative agency, the plaintiff is ordinarily required to pursue that avenue of redress before proceeding to the courts; and until that recourse is exhausted, suit is premature and must be dismissed.” *Reiter v. Cooper*, 507 U.S. 258, 269 (1993)(explaining distinction in doctrines of exhaustion of administrative remedies and primary jurisdiction) (citing *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938); *Heckler v. Ringer*, 466 U.S. 602, 617, 619 & n. 12 (1984)). Statutory (as opposed to common law) requirements for a party to pursue an administrative process prior to judicial review are prerequisite to the court's jurisdiction. *Cf. Sousa v. Immigration and Naturalization Service*, 226 F.3<sup>d</sup> 28, 31 (1<sup>st</sup> Cir. 2000) (observing that “exhaustion requirements imposed by statute [are] more rigid than the common law doctrine”). “Statutes requiring exhaustion serve a purpose when a significant number of aggrieved parties, if given the chance, would not properly exhaust.” *Woodford v. Ngo*, 548 U.S. 81, 89 (2006). Exhaustion requires “these parties to do what they would otherwise prefer not to do, namely, to give the agency a fair and full

opportunity to adjudicate their claims.” *Id.* at 90. Dismissal is thus required where a party fails to exhaust administrative remedies imposed by statute. *See, e.g., Muskat v. United States*, 554 F.3d 183, 195 (1st Cir. 2009) (upholding district court’s decision that it lacked jurisdiction to hear taxpayer challenge to IRS disallowance of claim for refund of self-employment tax); *Barrett ex. rel. Estate of Barrett v. United States*, 462 F.3d 28, 38 (1st Cir. 2006) (federal jurisdiction lacking for claim brought under Federal Tort Claims Act where plaintiff failed to satisfy statutory requirements for timing of court filing after agency decision).

**2. PSNH Has Failed to Exhaust Administrative Remedies Required by New Hampshire Law for Disputes over Pole Attachment Rates.**

PSNH casts its claims as a simple collections matter when in fact the parties have a fundamental disagreement as to whether the utility may impose a VoIP surcharge on each Time Warner Cable attachment used to deliver the new service. *See Saint Torrance v. Firststar d/b/a US Bank N.A.*, 529 F. Supp. 2d 836, 839 -40 (S.D. Ohio 2007) (“[c]asting the allegations in the complaint to sound in tort or contract is not sufficient to confer jurisdiction upon a trial court when the basic claim is one that the commission has exclusive jurisdiction to resolve”) (internal quotations and citations omitted). This Court lacks jurisdiction to hear this dispute because New Hampshire law designates the PUC as the sole forum for disputes as to the reasonableness of pole attachment rates, terms and conditions, and prescribes the only allowable procedure for that dispute. As the PUC explained, “in accordance with federal law, RSA 374:34-a and PUC 1300 establish the Commission’s jurisdiction over the rates, terms and conditions of utility pole attachments and any disputes concerning pole attachments that may arise under that statute and those rules.” *PUC Response* at 3. All disputes as to the reasonableness of pole attachment rates

must be heard by the PUC, under the PUC's procedural rules.<sup>12</sup> *See, e.g.*, RSA 374:34-a, II & VII (PUC authority over pole attachment disputes and agreements as to reasonableness of rates, terms and conditions); PUC R. 1304.02 – 1304.05 (persons unable to reach agreement on pole attachment terms may petition PUC pursuant to adjudicative proceeding procedures specified at PUC R. chapter 203); PUC R. 203.01 – 34 (detailed specifications for adjudicative proceedings). The state thus considered and provided a detailed administrative process for this type of dispute.

Chapter 541 of New Hampshire's Revised Statutes carefully delineates the permissible remedy for any party affected by a decision of the PUC in an adjudicative proceeding like pole attachment petitions authorized by PUC R. 1304.02 – 1304.05. First, under RSA 541:2 “any order or decision of the commission may be the subject of a motion for rehearing or of an appeal in the manner prescribed by the following sections.” After a decision on rehearing, “the applicant may appeal by petition to the supreme court” of the state. RSA 541:6. But appeal to the New Hampshire Supreme Court is the *exclusive* remedy: “[n]o proceeding other than the appeal herein provided for shall be maintained in any court of this state to set aside, enjoin the enforcement of, or otherwise review or impeach any order of the commission, except as otherwise specifically provided.” RSA 541:22. The Supreme Court of New Hampshire considered this “well-ordered and well-articulated scheme . . . in the review of public utility regulation” and observed “[w]here the statute setting up the agency makes specific provision for

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<sup>12</sup> Courts would, however, have jurisdiction to hear disputes arising under a pole attachment agreement that do not infringe on the PUC's jurisdiction over the reasonableness of rates, terms and conditions. For example, in *Public Serv. Co. v. F.C.C.*, the court upheld the FCC's order finding that a utility's assessment of penalties for “unauthorized attachments” was unreasonable, but recognized that the Commission “left the door open for potential litigation of factual disputes” of an accounting or auditing nature in state court. 328 F.3d 675, 679 (D.C. Cir. 2003) (prior and related citations omitted). The exact scope of issues outside of the PUC's jurisdiction need not be defined here, however, because state law unequivocally directs the PUC to resolve disputes, like this one, over the “reasonableness” of pole attachment rates, there are no side accounting disputes like those alluded to in *Public Serv. Co.* that the PUC might not resolve.

judicial review of the agency's determinations, the statutory method is ordinarily exclusive..." *Nashua v. Public Utils. Comm'n*, 101 N.H. 503, 148 A.2d 277, 279 -80 (1959) (internal quotations and citations omitted). The state Supreme Court's rules require any party appealing from an agency like the PUC to satisfy these prerequisites. N.H. S. Ct. Rules, Procedural Rule 10(1) note (citing *Appeal of White Mountains Edu. Ass'n*, 125 N.H. 771, 486 A.2d 283, 286 (1984) (Souter, J.) (failure to comply with rehearing provision of RSA 541:4 will result in refusal or dismissal of appeal).

The First Circuit ruled that, under an analogous federal statutory requirement for hearings on claims of unfair energy practices by the Federal Energy Regulatory Commission, the required procedures were "a jurisdictional prerequisite to judicial review." *Boston Gas Co. v. FERC*, 575 F.2d 975, 977 (1st Cir. 1978) (internal citations and quotes omitted). The statutory process for appeals from decisions of FERC mirrored those of RSA ch. 541, with a "tightly structured and formal" process which required parties to seek rehearing from the agency and obtain a ruling on that motion before any appeal. *Id.* at 979. The court rejected the argument that the statutory procedure could be waived, because there was "no basis for replacing the uniform ground rules the statute so clearly sets forth with a rule permitting either unguided discretion or inadvertence . . . ." *Id.* The Court found that neither it nor the district court had jurisdiction because Boston Gas failed to satisfy the statutorily required administrative process. *Id.* at 977. PSNH has failed to begin, much less complete, the administrative process required by New Hampshire law, and its Complaint should likewise be dismissed.

### 3. The Pole Attachment Agreement Between the Parties Likewise Requires an Administrative Remedy for Disputes over Pole Attachment Rates.

The parties' contract recognizes this principle, and specifies that disputes as to the reasonableness of rate changes are to be decided by an administrative agency, not the courts. Section 3.1.3 of the pole attachment agreement, cited at paragraph 2 of PSNH's Complaint, provides in relevant part that where PSNH seeks to change the rates and Time Warner Cable objects, Time Warner Cable may "submit[ ] the issue to the regulatory body asserting jurisdiction over this Agreement for decision."<sup>13</sup> Laine Aff., Exhibit 1 at p. 7. The parties thus anticipated that they might disagree as to permissible pole attachment rates, just as pole owners and attaching parties have disagreed in recent history, and provided that the administrative agency would be the forum for dispute resolution.<sup>14</sup>

PSNH failed to initiate, much less exhaust, the administrative procedures required under New Hampshire law for disputes as to the reasonableness of pole attachment rates. It has attempted to force Time Warner Cable to pay a new VoIP surcharge for pole attachments, but the PUC has never considered the policy ramifications of such a surcharge on voice and other

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<sup>13</sup>The choice of law provision in the agreement, section 15.5, specifies that "[a]ll actions under this Agreement shall be brought in a court of competent subject-matter jurisdiction of the county of the capital of such State or Commonwealth or a regulatory agency with subject-matter jurisdiction, and both parties agree to accept and submit to the personal jurisdiction of such court or regulatory agency." Laine Aff., Ex. 1, 2004 Agreement at p. 23 § 15.5. Section 3.1.3, however, specifies that an agency is the proper forum for disputes over whether a proposed rate increase is "unacceptable." *Id.* at 7.

<sup>14</sup> The contract's requirement of agency resolution of disputes as to rate changes provides Time Warner Cable with a separate Rule 12(b)(6) motion to dismiss for failure to state a claim under which relief may be granted. The contract is deemed to be part of the Complaint. *See, e.g., Alternative Energy, Inc. v. St. Paul Fire & Marine Ins. Co.*, 267 F.3d 30, 33 (1st Cir. 2001) ("When the complaint relies upon a document . . . such a document 'merges into the pleadings' and the court may properly consider it under a Rule 12(b)(6) motion to dismiss"). But the fee dispute provision simply reflects the law, which requires the PUC – and not any court – to determine the reasonableness of pole attachment rates in New Hampshire independent of any contractual agreement for the PUC to determine what constitutes "unacceptable" rate changes.

broadband competition. To be sure, PSNH fully understands Time Warner Cable's fundamental objection to a VoIP surcharge as an unreasonable pole attachment rate that undermines Time Warner Cable's introduction of competitive voice service. Laine Aff. at 5 ¶ 17 & Exh. 4. The matter should be decided by the PUC and only the PUC.

**4. This Court Should Dismiss PSNH's Complaint to Allow the PUC to Resolve this Dispute.**

Time Warner Cable has rectified PSNH's erroneous resort to court, by filing a formal petition to the PUC. The PUC will analyze this dispute not as the breach of contract case PSNH seeks to litigate in court, but as the matter of the statewide communications policy in fact at issue. Before the PUC, other interested parties, including the PUC's consumer advocate, will have the opportunity to participate in the case. PUC R. 1304.02 – 1304.05 (petitions for resolution of pole attachment disputes governed by PUC R. ch. 203); PUC R. 203.12 (public notice of hearing), 203.17 (intervention), 203.18 (public comment). Disappointed advocates for any of the affected industry segments or consumers will have the right of appeal to the New Hampshire Supreme Court. RSA 541:1 – 541:22 (rehearings and appeals). In light of this carefully articulated administrative and judicial process for the resolution of disputes as to the reasonableness of pole attachment rates this Court lacks jurisdiction over PSNH's Complaint and should dismiss that Complaint.

**B. Alternatively, the Doctrine of Primary Jurisdiction Mandates Dismissal or a Stay of Further Proceedings until the PUC Resolves the Pending Proceedings**

Even if this case were not subject to the PUC's exclusive jurisdiction, the Court would otherwise be compelled to dismiss PSNH's claims in deference to Time Warner Cable's pending petition before the PUC. When a claim pending before a court "requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an

administrative body,” the doctrine of primary jurisdiction mandates suspension of judicial proceedings “pending referral of such issues to the administrative body for its views.” *United States v. Western Pac. R.R. Co.*, 352 U.S. 59, 63-64 (1956). The purpose of the primary jurisdiction doctrine is to “coordinate administrative and judicial machinery” and to “promote uniformity and take advantage of agency expertise.” *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575, 580 (1st Cir. 1979). When the issues raised in a case have been “placed within the special competence of the administrative body,” and when filed cases pose a risk of inconsistent outcomes between courts and agencies on matters of regulatory policy, a court may dismiss a complaint without prejudice. *Reiter v. Cooper*, 507 U.S. 258, 268-69 (1993). Alternatively, a court may suspend the judicial process to afford an opportunity for the administrative body to act on the case. *Id.*

Although “[n]o fixed formula exists for applying the doctrine of primary jurisdiction,” *United States v. Western Pac. R.R.*, 325 U.S. at 64, the First Circuit has developed a three factor test to use in evaluating whether primary jurisdiction applies: “(1) whether the agency determination lies at the heart of the task assigned to the agency . . . (2) whether agency expertise is required to unravel intricate, technical facts; and (3) whether, though perhaps not determinative, the agency determination would materially aid the court.” *Pejepscot Indus. Park, Inc. v. Maine Central R.R. Co.*, 215 F.3d 195, 205 (1st Cir. 2000) (citing and quoting *Massachusetts v. Blackstone Valley Elec. Co.*, 67 F.3d 981, 992 (1st Cir. 1995), in turn quoting *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575, 580-81 (1st Cir. 1979) (internal alterations and quotes omitted). Each of these factors warrants the Court’s exercise of discretion to defer to the PUC in this case.

First, the agency's determination of reasonable rates "lies at the heart of the task assigned the agency" through Section 224 of the federal Communications Act and the New Hampshire Pole Attachment Act. As detailed above, the history of pole attachment regulation underscores the legislature's determination that expert agency oversight is required. The reasonableness of pole attachment rates is an issue of statewide public importance that benefits as well from the uniformity and certainty provided by agency oversight. A utility company should not be allowed to undermine the legislative purposes of pole attachment regulation simply by imposing unreasonable charges and then seeking to enforce the challenged rates in court.

Second, this case involves many issues of fact not within the conventional experience of judges, and the PUC's special expertise "is required to unravel intricate, technical facts" which must be analyzed before any decision maker is able to rule on PSNH's claims. *See Far East Conference v. United States*, 342 U.S. 570, 574 (1952). As the Supreme Court has stated, courts "are scarcely equipped to oversee, without the initial superintendence of a regulatory agency, rate structures and practices . . . . [Regulatory agencies are] equipped, as courts are not, to survey the field nationwide, and to regulate based on a full view of the relevant facts and circumstances." *Northwest Airlines, Inc. v. County of Kent*, 510 U.S. 355, 366-67 (1994) (citations omitted). The agency's mandate includes invalidating and/or ordering pole owners to refund excessive bills or charges levied on attaching parties. *See Cable Texas, Inc. v. Entergy Servs., Inc.*, 14 FCC Rcd. 6647, 6650 ¶ 9 (1999) (determining that the main issue was whether amount billed was excessive and ordering refund). More importantly, when a party to a pole attachment agreement raises a breach of contract claim, the agency has jurisdiction over that dispute to the extent that it involves an unjust or unreasonable rate, term or condition of attachment. *See Mile Hi Cable Partners v. Public Serv. Co. of Colo.*, 17 FCC Rcd. 6268, 6271

¶ 7 (2002) (holding that a breach of contract action was properly before the FCC because it required determination of whether rates, terms and conditions of pole attachment were just and reasonable), *aff'd*, 328 F.3d 675 (D.C. Cir. 2003); *Marcus Cable Assocs. v. Texas Utils. Elec. Co.*, FCC 03-173, 18 FCC Rcd. 15932, 15935-37 ¶¶ 6-8 (2003) (dispute as to reasonableness of utility fees for attaching parties' sublease of rights was within agency's jurisdiction); *Cavalier Tel. v. Virginia Elec. & Power Co.*, 15 FCC Rcd. 9563, 9565 ¶ 5 (2000) ("[c]ertain remedies for breach of contract may be pursued in forums other than the Commission," but not questions of reasonableness of rates, terms and conditions concerning pole attachments), *vacated by settlement*, 17 FCC Rcd. 24414 (2002).

As between courts and expert agencies, one federal district court described the administrative agency's role over the terms and conditions of pole attachments as "the decisive spotlight," stating that the agency "is far more capable than the courts to make such determinations [regarding pole rates and conditions] in an efficient and knowledgeable manner." *Gulf Power Co. v. United States*, 998 F. Supp. 1386 (N.D. Fla. 1998) (discussing FCC's jurisdiction over pole attachments in states that do not take jurisdiction), *aff'd*, 187 F.3d 1324 (11th Cir. 1999). Questions regarding pole attachment rates and conditions involve a "subject matter [that] is technical, complex and dynamic." *NCTA v. Gulf Power Co.*, 534 U.S. at 339. *See also Public Serv. Co. of Colo. v. Mile Hi Cable Partners*, 995 P.2d 310, 313 (Colo. Ct. App. 1999) (determination of contract dispute over unauthorized attachments first required determination of reasonableness of rates) (related proceedings omitted); *Texas Utils. Elec. Co. v. Heritage Commc'ns, Inc.*, No. 3:89-cv-3080-R, slip op. (N.D. Tex. June 22, 1990) (attached as Appendix 3) (staying case on primary jurisdiction grounds in a pole attachment case because, *inter alia*, agency's expertise made it "better equipped" than the court to resolve the issues).

Like the FCC in those states that do not regulate pole attachments, the PUC in New Hampshire has special competence to make the necessary determination in this “technical, complex and dynamic” area.

As to the third factor under *Pejepscot*, the agency’s determination would be more than helpful to the Court, it would be dispositive. Indeed, there is a significant possibility of inconsistent rulings if this Court should address any of PSNH’s claims before the PUC has an opportunity to decide an important regulatory and broadband deployment policy matter. *Clark v. Time Warner Cable*, 523 F.3d 1110, 1115 (9th Cir. 2008) (in referring claim to FCC on basis of doctrine of primary jurisdiction, court noted that “the FCC’s Notice of Proposed Rulemaking demonstrates that the agency is actively considering how it will regulate VoIP services and that the agency’s development of a uniform regulatory framework to confront this emerging technology is important to federal telecommunications policy”). A decision by this Court on the pole attachment matters raised in PSNH’s Complaint threatens to create not only inconsistencies in the body of law governing pole attachment matters, but also inconsistencies in the disposition of the parties’ dispute.

If the Court does not dismiss PSNH’s Complaint for lack of subject matter jurisdiction, it should therefore stay this case on grounds that the primary jurisdiction doctrine requires deference to the pending PUC proceeding because: (1) the PUC has specialized technical knowledge and expertise in resolving pole attachment complaints; (2) there is a proceeding pending at the PUC on the same issues raised by PSNH; and (3) there is a significant possibility of inconsistent rulings if this Court should address any of PSNH’s claims.<sup>15</sup> Other courts that

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<sup>15</sup> The presence of state law claims in PSNH’s lawsuit does not preclude dismissal or deferral to the PUC’s existing proceedings, as the resolution of those state law claims depends on the outcome of the pending PUC proceeding.

have considered the same issue have concluded that jurisdiction over the reasonableness of rates for pole attachments properly lies with the agency that has jurisdiction over pole attachment matters. *See, e.g., Texas Utils. Elec. Co. v. Heritage Commc 'ns, Inc.*, No. 3:89-cv-3080-R, slip op. (N.D. Tex. June 22, 1990) (court stayed, on primary jurisdiction grounds, a complaint brought by an electric utility against a cable operator seeking payment under a pole attachment agreement, because the pole dispute was also pending before the FCC, because pole attachments are subject to regulation by the FCC, and because the FCC had expertise making it “better equipped” than the Court to resolve the issues) (attached as Appendix 3); *Mile Hi Cable Partners*, 995 P.2d at 312 (deferring to FCC’s primary jurisdiction over all matters involving the terms and conditions for attaching cable company wires and equipment to utility poles until FCC proceedings were completed). Like the FCC in states that have not assumed jurisdiction over pole attachments, the primacy of the PUC’s jurisdiction in New Hampshire is clear. The claims presented in PSNH’s Complaint directly rest on – and are in fact encompassed by – the pending PUC case. At the very least, this Court should stay this matter to allow the PUC to resolve the underlying issue of the reasonableness of PSNH’s attempted VoIP surcharge on Time Warner Cable’s pole attachments.

#### IV. CONCLUSION

WHEREFORE, for all of the foregoing reasons, Time Warner Cable respectfully requests that this Court dismiss the case in its entirety or, in the alternative, that this Court stay the action pending resolution of the pending proceedings at the New Hampshire Public Utilities Commission.

Respectfully submitted,

**TIME WARNER ENTERTAINMENT L.P.  
d/b/a TIME WARNER CABLE**

By its attorneys,  
Pierce Atwood LLP

Dated this 2<sup>nd</sup> day of April, 2012.

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**Certificate of Service**

I hereby certify that a copy of the foregoing document was served on the following on this 2<sup>nd</sup> day of April, 2012, and in the manner specified herein:

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

Public Service Company of New Hampshire,

Plaintiff

vs.

Time Warner Entertainment Company, L.P.,

Defendant

Civil Action No. 12-cv-98-PB

**APPENDIX TO  
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S  
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION,  
OR IN THE ALTERNATIVE, MOTION TO STAY PROCEEDINGS**

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April 2, 2012

# **Appendix 1**

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October 16, 2009

The Honorable Maurice Pilotte  
Vice Chair, Joint Legislative Committee on Administrative Rules  
Office of Legislative Services  
Administrative Rules  
25 Capitol Street, Room 219  
Concord, NH 03301-6312

Re: Response to JLCAR's Preliminary Objection Notice Number 2009-79  
Puc 1300, Utility Pole Attachments, Readoption with Amendment  
NHPUC Docket No. DRM 08-004

Dear Representative Pilotte:

The Joint Legislative Committee on Administrative Rules (JLCAR or Committee) entered a preliminary objection on September 3, 2009, to the Final Proposal for Puc 1300, Utility Pole Attachments, Readoption with Amendment, filed by the New Hampshire Public Utilities Commission (Commission) on July 16, 2009. The Commission has carefully reviewed the annotations of JLCAR Staff, concerns raised by Committee members, and comments submitted to JLCAR by parties to this rulemaking and is pleased to submit responses herein.

A majority of JLCAR Staff's issues were incorporated into the rule filed on August 18, 2009, with the Commission's request for conditional approval. The proposed rule has been further amended in this filing to reflect changes made in response to certain comments by the parties, and are identified as new provisions in the rules submitted today. The Commission's reasons for those changes and for declining certain requested amendments are set forth below. In addition, we have included definitions of key terms at Attachment A and a procedural history of this rulemaking at Attachment B.

**A. JLCAR Committee Staff Comments.** Most of JLCAR Staff comments have been incorporated into the attached preliminary objection response proposal. Unresolved issues involve language that Committee Staff believes is unclear, as follows:

- rates, charges, terms and conditions "in the public interest" [see Puc 1301.01 and Puc 1304.05];
- "just, reasonable and nondiscriminatory" access [see Puc 1303.01];
- "generally applicable engineering purposes" [see Puc 1301.01]; and
- "extraordinary circumstances" [see Puc 1303.04].

NHPUC Response to Preliminary Objection  
PUC 1300, Utility Pole Attachments

**Commission Response.** The provisions noted above mirror the Commission's statutory authority governing Commission standards of review. Using terms that are consistent with statutory provisions is the clearest course, as these terms have been the subject of years of judicial interpretation, and will be understood in the context of that history. Creating slightly different standards than those contained within a statute or attempting to define concepts that have evolved over the years, in our view, will lead to uncertainty rather than clarity.

Following are examples of statutory provisions that use the phrases of concern:

**"public interest" and "public good"**

- RSA 365:19 (authority to conduct independent investigations)
- RSA 369:1 (authority to issue securities)
- RSA 374:22-e (alteration of territories consistent with the public good)
- RSA 374:22-g (authorize competitive suppliers consistent with the public good)
- RSA 374:30 (transfer or lease of utility franchises)
- RSA 374:33 (acquisition of stock)
- RSA 374:34-a (regulation of pole attachments)
- RSA 378:27 (authority to impose temporary rates)

**"non-discriminatory"**

RSA 374:34-a (pole owner provide non-discriminatory access)

RSA 378:4 (retroactive reduction is rates when no discrimination caused)

**"generally applicable engineering purposes"**

RSA 374:34-a (may deny on basis of generally applicable engineering purposes)

**"just and reasonable"**

RSA 374:1 (service safe and adequate, just and reasonable)

RSA 374:2 (charges for service to be just and reasonable)

RSA 374:3-a (just and reasonable rates)

Committee Staff also requested that the phrase **"just and reasonable rates"** in Puc 1304.06(a) be changed to "maximum just and reasonable rates" to reflect related federal regulations. [See also Puc 1304.07.] The federal regulations, unlike the Commission's proposed rule, actually set maximum rates in certain situations. The Commission does not intend to set rates, but rather is establishing a framework to evaluate whether the rates proposed by parties are just and reasonable. Adopting the language of the federal regulation at 47 CFR § 1.1409, therefore, would not be appropriate.

Committee Staff found the phrase **"absent extraordinary circumstances"** unclear. The phrase does not appear in RSAs governing the Commission, but is intended to reflect the legal principle of *force majeure* and other events beyond the control of a party which nevertheless result in non-compliance with a provision of the rules. The Commission believes that such circumstances will require a case-by-case review and cannot be defined in a rule.

Committee Staff also commented that references in Puc 1303.07, Puc 1303.10 and Puc 1303.11 to the **National Electrical Code** as adopted in RSA 155-A:1,IV are supported by a citation to the

NHPUC Response to Preliminary Objection  
PUC 1300, Utility Pole Attachments

2008 Electrical Code in the Incorporation by Reference Statement (IBRS) and do not match the RSA citation. The Commission agrees that the date in the IBRS was incorrect and, moreover, that because the RSA cites the Code, an IBRS is not necessary. We have therefore removed the IBRS. We also note that the citation in RSA 155-A:1, IV is incorrect and should read "National Electrical Code," rather than "National Electric Code."

**B. Scope of PUC Jurisdiction under the Statute & Rules.** (LGC, DTC, FairPoint, segTEL)

Several parties contend that the proposed rule exceeds the jurisdiction granted the Commission under RSA 374:34-a. FairPoint Communications, Inc. (FairPoint) and segTEL argue that RSA 374:34-a limits the Commission's jurisdiction to cable television and competitive local exchange telecommunications providers, as set forth in 47 U.S.C. section 224, the pole attachment provision of the federal Telecommunications Act of 1996.

**Commission Response.** The long history of the shared jurisdiction over pole attachments between state and federal authorities helps to put our proposed rule into context. Initially, pole attachments were governed exclusively by local and state governments. Through the Communications Act of 1934, Congress gave the Federal Communications Commission (FCC) jurisdiction to establish rules governing pole attachments rates, terms and conditions, but limited the FCC's jurisdictional reach to those states without regulatory authority of their own over such matters. States that certify to the FCC that they regulate the matters addressed in federal regulations are given authority to exercise such powers, in addition to all other authority they may have under state law. Upon the enactment of RSA 374:34-a, New Hampshire certified to the FCC that it has the authority to regulate utility poles and their attachments. As a result, in accordance with federal law, RSA 374:34-a and Puc 1300 establish the Commission's jurisdiction over the rates, terms and conditions of utility pole attachments and any disputes concerning pole attachments that may arise under that statute and those rules. Thus, the Commission is directed to ensure that pole attachment rates are just and reasonable, and that access to utility poles for the purpose of attaching facilities is provided in a nondiscriminatory manner.

Throughout this rulemaking, there has been debate over the interpretation of RSA 374:34-a, II:

Whenever a pole owner is unable to reach agreement with a 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 rates, charges, terms and conditions are just and reasonable. This authority shall include but not be limited to the state regulatory authority referenced in 47 U.S.C. section 224(c) (emphasis added).

The phrase "types of attachments regulated under 47 U.S.C. section 224" has been interpreted by some to give the Commission authority over attachments by cable television providers and competitive local exchange telecommunications carriers but no others; attachments by any other entities are outside the Commission's jurisdiction, in their view.

We believe such a reading of RSA 374:34-a, II is incorrect and would amount to no PUC regulation over attachments of electric utilities, incumbent telephone utilities (a result that hardly could have been intended) or municipalities. The Commission's authority to impose safety standards, which includes allowable weight, required space between lines, emergency management signaling and

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required electrical safety standards, would be limited to attachments by cable television and competitive local exchange carriers. We believe RSA 374:34-a,II can only be read as giving the Commission the authority identified in 47 U.S.C. section 224(c) *in addition to* the authority the Commission has under state law. RSA 374:34-a, in fact, makes that clear, by stating that the Commission's authority "shall include *but not be limited to* the state regulatory authority referenced in 47 U.S.C. section 224(c)."

RSA 374:3 sets forth the PUC's "Extent of Power" – "The public utilities commission shall have the *general supervision of all public utilities and the plants owned, operated or controlled by the same* so far as necessary to carry into effect the provisions of this title." The referenced title extends from RSA 362 to RSA 384, most of an RSA volume. RSA 374:1 provides that "[e]very public utility shall furnish such service and *facilities as shall be reasonably safe and adequate* and in all other respects just and reasonable." (emphasis added). The poles and conduits owned by the public utilities that we regulate and that are the main subject of the proposed rule are part of the plant and facilities owned, operated or controlled and furnished by public utilities. We have the authority and duty to supervise the safety and adequacy of the poles and conduits covered by the proposed rule and that necessarily includes the safety and conditions of attachments thereto. Additional discussion of the definition of "plant" in this context is provided in Attachment A.

**C. Entities to which the Rules Apply.** LGC and DTC assert that the rules should not extend to municipalities that do not provide commercial telecommunications services.

**Commission Response.** 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 (*i.e.*, municipalities). The FCC definition is similar: an "attaching entity" includes "cable system operators, telecommunications carriers, incumbent and other local exchange carriers, utilities, governmental entities and other entities with a physical attachment to the pole, duct, conduit or right of way." 47 CFR 1.1402(m).

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 be to remove any enforceable requirement that municipalities adhere to certain notice, safety, and good-faith 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 poles to be notified of facilities that are attached to those poles.

**D. Facilities to which the Rules Apply.** LGC found the definition of "facility" to be unclear. Based on a September 11, 2009 meeting with LGC representatives, we have amended the proposed language of Puc 1302.05 to include "or for public safety purposes".

**E. Cost Sharing Provisions.** FairPoint argues that the cost-sharing provisions of Puc 1303.09 result in an unconstitutional taking and violation of due process.

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**Commission Response.** Incumbent local exchange carriers (ILECs) such as FairPoint typically attach at the lowest permissible point on a pole in accordance with safety standards, given the sag factor of heavier telecom lines. However, ILEC attachments have historically been placed at some point above the lowest permissible point before other carriers needed space on the poles. This might have occurred, for example, where an ILEC wished to create a straighter line over uneven terrain, or for ease of access and maintenance.

FairPoint has testified that, for reasons unrelated to safety concerns, its attachments are not always located at the lowest legal and feasible point on a pole. FairPoint argues that requiring it to shoulder 60% of the cost to move its facilities lower on a pole to make room for a new attachment and comply with safety standards and practices constitutes a taking under the law in violation of due process. FairPoint does not cite any authority to support its position.

FairPoint's aim is to maintain a consistent height of its attachments all the way down the line, and reserving the lowest feasible position on a pole permits them to do that. However, FairPoint and its predecessors have often placed their attachments at a location higher than the lowest permissible position, given the lack of competition for space on poles in years past. As a result, in many cases the only available space for a new entity seeking attachment is below FairPoint's lines. FairPoint and other incumbent telephone companies would like to charge new attachers 100% of the cost to move their lines to make space available. Several parties argued those costs should be borne in whole or in part by the incumbent telephone company.

The Commission believes the proposed rules, which establish a 60/40 cost sharing, are a fair and balanced result reflecting the competing positions advanced in this proceeding. Our initial proposal placed 100% of the cost burden on the incumbent telephone companies such as FairPoint. In response to comments, we amended the original provision to require the entity seeking a new attachment to bear 40% of those costs. In addition, of course, the pole owner will recover operational and maintenance costs for its utility poles and wires through attachment fees that will recur for the duration of an attachment agreement. Furthermore, in the event an incumbent telephone company's facilities cannot be lowered to make room for new attachers due to safety and engineering concerns, the request to attach may be denied.

**F. Provisions regarding "boxing" and "extension arms."** At the JLCAR hearing, FairPoint recommended deleting the provisions allowing limited use of "boxing" and "extension arms" found at Puc 1303.10 and 1303.11.

**Commission Response.** The Commission disagrees. Pole owners expressed concern that the use of boxing and extension arms creates unnecessary safety risks and should be allowed in extremely limited circumstances. Would-be attachers, on the other hand, pointed out that the pole owners themselves use boxing and extension arms at times, and that these practices are occasionally the only cost-effective way to attach to utility poles, given existing attachments and the location on the poles of those attachments.

The proposed rule limits the use of boxing and extension arms, subject to compliance with safety standards. We believe the inclusion of these provisions strikes an appropriate balance and is in the

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best interest of all parties, as it provides a framework that will discourage the unauthorized or indiscriminate use of such practices, while providing recourse as needed.

**G. Concerns raised by segTEL.** segTEL made numerous suggestions, several of which have been incorporated in the draft submitted herewith. These changes include: (a) tightening the provision that authorization be obtained prior to attaching facilities to a pole by requiring authorization to be made or denied within 45 days, and (b) tightening response provisions for make-ready work. Puc 1303.05, and 1303.12. We also agree with segTEL that the reference to the Telcordia Blue Book Manual of Construction Procedures is inappropriate, as it is not an industry-wide standard, but a standard specific to FairPoint and other former Bell Telephone companies. Puc 1303.07 as proposed herein deletes the reference to the Telcordia Blue Book.

Further arguments by segTEL, not adopted by the Commission, include:

- (1) federal law preempts RSA 231:159 *et seq.*;
- (2) prepayment of estimated survey and make-ready costs is unreasonable;
- (3) time is of the essence in allowing attachments on existing poles and therefore timeframes set forth in the rules should be shortened;
- (4) the rules should not permit the removal of unauthorized attachments at all; and
- (5) pole attachment agreements that pre-date RSA 374:34-a should be presumed to be contracts of adhesion.

**Commission Response.** With respect to the federal preemption assertion, the Commission believes that the authority granted municipalities under RSA 231:159 *et seq.* is not altered by this rule. With respect to prepayments, timeframes, and the removal of unauthorized attachments, the Commission believes that the rule balances the competing interests of competitor providers such as segTEL and pole owners. Regarding segTEL's assertion that pole attachment agreements that pre-date RSA 374:34-a should be presumed to be contracts of adhesion, we find no persuasive basis to reach such a conclusion. To the extent that a party to a pre-existing attachment agreement believes an agreement to be onerous, unfair or unreasonable, it can seek dispute resolution from the Commission.

**H. New England Cable and Telecommunications Association (NECTA).** NECTA argues that Puc 1304.06, Rate Review Standards, should adopt a single rate based on the Federal Communications Commission's cable rate for attachments, and that the 60-day advance notice requirement for performing pole-related work, including upgrading of cable facilities using fiber over-lashing, is too long.

**Commission Response.** The Commission took NECTA's arguments into consideration in the underlying rulemaking proceeding. Puc 1304.05(a) does not mandate any particular rate setting methodology, though it instructs the Commission to consider an FCC rate setting formula that employs a 2-tiered pricing system, as well as the interests of the subscribers, users and consumers of the services provided via pole attachments. We believe the proposed rule fairly balances the competing interests. Further, we do not believe that shortening the notice requirement of Puc 1303.06 to less than 60 days is in the public interest.

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**I. Fibertech Networks, LLC (Fibertech).** Fibertech supports the Commission's actions to support the original make-ready time frames, but suggests that the timeframes should be shortened in future iterations of the rules. Given the nature of Fibertech's comments, the Commission did not amend the proposed rule.

**J. New Hampshire Local Government Center (LGC).** LGC makes the following arguments in its various submissions to JLCAR, including its September 3 PowerPoint presentation:

- (1) The purpose statement in Puc 1301.01 violates the Administrative Rules Manual by requiring compliance with "other law."
- (2) The rules exceed the Commission's statutory authority by including governmental entities in the definition of "attaching entity" in Puc 1302.01.
- (3) The definition of "attaching entity" set forth in Puc 1302.01 should not include governmental entities unless such entities are also telecommunications service providers.
- (4) The rules fail to consider private property rights of pole owners and owners of land on which a pole is set and should not apply to poles placed pursuant to private agreement with landowners.
- (5) The access standard set forth in Puc 1303.01 does not completely set forth potential reasons for denial of an attachment request.
- (6) The rules fail to explicitly acknowledge the role of municipalities as the licensing authority for installation of equipment in a municipal right of way.
- (7) The proposed rules for dispute resolution should be placed within the Commission's PUC 200 rules; moreover, they fail to provide municipalities adequate notice and opportunity to be heard, violate RSA 541-A:39, violate the requirement that proposed attachments serve the public good, and violate the requirement that a license be obtained prior to commencing a proceeding.

#### **Commission Response.**

(1): Regarding the purpose statement, Puc 1301.01, the proposed rule does not "require compliance" with any laws that fall outside the scope of Commission jurisdiction. The provision simply states that "nothing in this rule shall be construed to supersede, overrule, or replace any other law, rule or regulation, including municipal and state authority over public highways pursuant to RSA 231:159 *et seq.*" The Commission, in fact, added this language to address the LGC's request that the Puc rule explicitly recognize the municipal licensing statutes cited. The better course would be to delete the phrase "including...RSA 231:159 *et seq.*", as we believe agency rules should not codify statutes unrelated to our authority to regulate utilities and their plant, including poles and pole attachments. To address the LGC's concerns, however, we are prepared to leave the provision as drafted.

(2) and (3): Regarding the LGC's assertion that "attaching entities" should not apply to municipalities, we respectfully disagree. As noted in the discussion of scope and jurisdiction at sections B and C above, we believe our authority extends to attachments on all public utility poles and utility plant, including attachments by municipalities. We also disagree that the applicability of this rule should be limited to municipalities that are also telecommunications service providers. As noted above, our jurisdiction is based on our statutory mandate to ensure

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safe and reliable service and facilities. That role includes enforcement of applicable safety codes and related measures that ensure utility plant and facilities are safely operated and managed. We believe that, for public safety reasons, municipalities should not be permitted to attach facilities to utility poles without adherence to certain minimum notice and safety requirements, as established in this rule.

(4): The LGC asserts that the Commission has no authority to adjudicate disputes that concern poles and attachments located on private property under private easement. We find no basis to conclude that the Superior Court is the only venue in which landowner disputes may be adjudicated; in fact, the Commission has long provided a forum for disputes of private landowners who take issue with utility easements and facilities located on their property.

(5): Regarding the LGC's claim that the access standard set forth in Puc 1303.01 does not completely set forth potential reasons for denial of an attachment request, we disagree. The proposed rule provided that "[n]othing herein shall require the owner or owners of a pole to provide access where such access would violate other applicable laws, rules or regulations" which seems to have been the type of situation about which the LGC is concerned. To the extent that this language was not clear enough, we have proposed amending Puc 1303.01, to provide that a pole owner may deny an attachment if it does not possess the authority to allow the attachment, which arguably might include situations where a pole owner would violate the terms of an otherwise lawful and valid municipal license or other law, rule or regulation or where they do not possess the necessary property rights to lawfully allow the proposed attachment.

(6) Regarding the LGC's request that municipal licensing laws be codified within this rule or that compliance with such laws by attaching entities be a precondition to a public utility's authorization for access to poles pursuant to PUC rules, we do not believe an agency rule should address the authority of municipalities under other statutes where the legislature has not granted the PUC any jurisdiction or enforcement authority over such statutes.

(7): Regarding the LGC assertion that the Commission may respond to a petition for dispute resolution with something other than an adjudicative process, the language of the rule itself resolves the issue. Puc 1304.03 clearly states that a pole owner may "petition the commission pursuant to Puc 203 . . ." Puc 1304.05 states that in response to a petition the Commission shall conduct "an adjudicative proceeding pursuant to Puc 203 . . ." Puc 203, which is titled "Adjudicative Proceedings," spells out the standards for adjudicated matters before the Commission. Regarding the request that the rules state that the Commission shall notify municipalities in the case of petitions for dispute resolution, it is clear that when RSA 541-A:39 requires such notice, the Commission is bound to provide it. Though we do not believe it is necessary to identify every statute or rule that governs an agency, our objection response amendment to the proposed rule now includes a reference to RSA 541-A:39 as requested.

Regarding the claim that the rules would violate the requirement that proposed attachments serve the public good, the Commission finds no basis to agree. The purpose language of Puc 1301.01 makes clear that the rules are intended to result in "rates, charges, terms and conditions for pole attachments that are just, reasonable and *in the public interest*." (emphasis added).

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Finally, regarding the claim that the rules would violate the requirement that a license be obtained prior to commencing a proceeding, we have included language that makes clear that an owner of a pole may deny a request for attachment when it does not have the authority to allow the attachment to take place, which might include instances in which a municipal license has not been obtained pursuant to RSA 231:161. See Puc 1303.01(c).

**K. Donahue, Tucker & Ciandella on behalf of 5 municipalities (DTC).** DTC asserts a number of arguments regarding municipal authority, as follows:

- (1) **Definition of Governmental Entities.** Municipality representative DTC requested that we limit the applicability of the pole attachment rules to only those governmental entities attaching facilities for commercial purposes. Municipalities maintain that any non-commercial facilities they may wish to attach to utility poles should not be subject to the various provisions of the proposed rules, such as notification requirements, cost-sharing provisions, duty to negotiate, dispute resolution, and burden of proof, among others.
- (2) **Reference to Municipal Licensing Statutes.** Municipal representatives have been adamant in requesting references to pole licensing statutes in the Commission's pole attachment rules, including a provision that states that all attachments must be properly licensed. In effect, municipalities would like the Commission's rules to codify the statutory licensing requirements set forth in RSA 231:159 *et seq.*
- (3) **Reservation of Space.** The municipalities also assert that, based on industry practice, certain historic pole license agreements, and statutory licensing authority, they are entitled to reserve space for future attachments on all poles indefinitely and free of charge. Other attaching entities competing for available space oppose the municipalities' position on this issue.

**Commission Response.**

- (1) Regarding the claim that the rules only apply to municipalities attaching facilities for commercial purposes, the Commission disagrees. We believe that the overarching purpose of these rules is to establish minimum guidelines for the practice of attaching facilities to utility poles. Certain guidelines are aimed at ensuring that pole owners are not subject to unauthorized attachments, as the pole owners are ultimately responsible for the safety and reliability implications of all attachments. The proposed rules do not mandate rates for non-commercial municipal attachments; all other provisions are designed to ensure public safety and reliability of service, while balancing the interests of pole owners and attachers.
- (2) Regarding municipal authority under RSA 231:159, see the response in Section G and J (6) and (7) above.
- (3) Regarding the claim that municipalities are entitled to reserve space on poles free of charge, we are concerned that, in an era of competitive provision of telecommunications and other services that require attachment to utility poles, which by their nature are limited in space, such an automatic

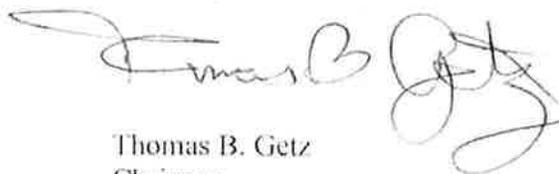
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reservation might have a discriminatory impact and might undermine the potential for greater competition in provision of services. Nonetheless, the proposed rule does not categorically preclude reservation of space by municipalities under the terms of a license agreement. Furthermore, the proposed rules do not establish rates for non-commercial municipal attachments.

**L. Conclusion.** After careful review and consideration of all of the bases for preliminary objection by JLCAR, we have made certain amendments to the attached proposed rule. We believe that the resulting rule is fair, just and reasonable, and reflects a balanced result that is in the public interest and in full accordance with our statutory mandate.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Getz", is written over a printed name and title. The signature is stylized and cursive.

Thomas B. Getz  
Chairman

Cc: Members of the Joint Legislative Committee on Administrative Rules  
Scott Eaton, Staff Director

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## ATTACHMENT A

Pursuant to the Committee's request and in the interest of clarifying certain key concepts, we provide definitions of *Pole Attachments*, and *Attaching Entities and Utility Plant*.

A "**pole attachment**" is defined in RSA 374:34-a as "any pole, duct, conduit, or right-of-way that is used for wire communications or electricity distribution and is owned in whole or in part by a public utility" (emphasis added). The FCC defines it as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 CFR 1.1402(b).

The FCC defines an "**attaching entity**" as including "cable system operators, telecommunications carriers, incumbent and other local exchange carriers, utilities, governmental entities and other entities with a physical attachment to the pole, duct, conduit or right of way." 47 CFR 1.1402(m).

The Commission's rules similarly define "attaching entities" as including, but not limited to, telecom providers, cable TV service providers, ILECs, CLECs, electric utilities, and governmental entities (*i.e.*, municipalities). The rules define "facility" as "the lines and cables and accompanying appurtenances attached to a utility pole for the transmission of electricity, information, telecommunications, or video programming for the public." Puc 1302.05.

The term "**plant**" in the utility context is not defined in and of itself in the RSAs but falls within the definition of "public utility" under the Commission's statutory mandate and appears in numerous other Commission authorities. RSA 374:3 grants the Commission general supervisory authority "of all public utilities and the plants owned, operated or controlled by the same".

"Public utility" is defined in RSA 362:2 as including "every corporation, company, association, joint stock association, partnership and person . . . owning, operating or managing *any plant or equipment or any part of the same for the conveyance of telephone or telegraph messages or for the manufacture or furnishing of light, heat, sewage disposal, power or water for the public, or in the generation, transmission or sale of electricity ultimately sold to the public.* . . . (emphasis added).

PUC rules set forth certain safety standards requirements that utilities must meet in the construction, installation and maintenance of their "plant, structures and equipment and lines" (*see, e.g.*, Puc 306.01 – electric; Puc 413.01 – incumbent local exchange carriers).

The PUC rules further require utilities to file certain accounting elements, including calculations of rate base components such as "utility plant in service," and analyses of plant accounts (*see, e.g.*, Puc 308.11 – electric; Puc 429.04 – incumbent local exchange carriers). New Hampshire utilities must comply with federal and state accounting standards as set forth in applicable Uniform Systems of Accounts (*see, e.g.*, Puc 307.04 – electric; Puc 414.01 – incumbent local exchange carriers). Electric companies must comply with the Federal Regulatory Energy Commission and U.S. Department of Energy's "Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to Provisions of the Federal Power Act." Within that System of Accounts, the Electric Plant Chart of

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Accounts lists “**Poles**, towers and fixtures” under “Distribution **Plant**” (*see* 18 CFR 101.364). Incumbent local exchange carriers must comply with the Uniform System of Accounts for Telecommunications Companies,” under which “Property, **Plant** and Equipment” includes “**Poles**” (*see* Section 403.03(q) of PART Puc 409).

Webster’s New Collegiate Dictionary (1981) defines “**plant**” (in this context) as “the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business,” “the total facilities available for production or service,” and “the buildings and other physical equipment of an institution.”

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## ATTACHMENT B

### Procedural Background

Under RSA 374:34-a, the Commission was granted authority to regulate rates, terms and conditions of attachments to utility poles. In accordance with the statute, we adopted interim rules for effect on January 17, 2008. The interim rules expire on January 17, 2010. An Initial Proposal for regular rule Puc 1300 was filed with JLCAR on May 12, 2009; a Final Proposal was filed on July 17, 2009; a Request for Conditional Approval was filed on August 18, 2009.

The underlying initial and final rulemakings included five opportunities for parties to comment on the proposed rule, including a public hearing held on June 18, 2009. (See Attachment C for a summary of comments received.) Two technical sessions were held, in addition to separate meetings held by party request with pole owners, competitive telecommunications carriers, and municipal representatives. Furthermore, on September 11, 2009, Commission representatives met with the Executive Director and staff of the Local Government Center.

Participants in the underlying comment process included representatives from:

- PSNH
- Unitil
- National Grid
- New Hampshire Electric Cooperative
- FairPoint Communications
- New Hampshire Telephone Association (NHITA)
- TDS Telecom
- Granite State Telephone
- segTEL
- New England Cable & Telecommunications Association (NECTA)
- New Hampshire Local Government Center (LGC)/NH Municipal Association
- Town of Hanover and, jointly represented through Donahue, Tucker & Ciandella (DTC) as counsel, the towns of Exeter, Hanover, Keene, Portsmouth, Newmarket, Salem, Seabrook, Raymond, and Stratham
- Cities of Concord, Manchester, and Keene
- Fire Departments of Concord, Manchester, Nashua, Keene, Claremont, and Peterborough
- New Hampshire Department of Transportation
- New Hampshire Department of Justice
- Commission Staff.

In developing its Initial and Final Proposals, the Commission considered all comments, both written and oral. It also considered issues explored in the course of an underlying generic investigation on utility pole practices launched in 2005 (Docket No. DM 05-172), the federal legal framework, and the statutory mandate set forth in RSA 374:34-a.

## ATTACHMENT C

## COMMENTS OPPORTUNITIES IN PUC 1300 RULEMAKING

## COMMENTS RECEIVED PRIOR TO THE COMMENCEMENT OF PUC FORMAL RULEMAKING

- PUC 1300 Draft Initial Proposal Circulated to Parties for Comment by 3/5/08
  - **Comments submitted to Staff**
    - PSNH
    - National Grid
    - NECTA
    - Oxford Networks
    - segTEL
    - Verizon
    - Eight IJECs
    - Municipalities (DTC)
- PUC 1300 Draft Initial Proposal Circulated to Parties for Comment by 6/25/08
  - **Comments submitted to Staff**
    - NECTA
    - segTEL
    - NHTA
    - Local Government Center
- PUC 1300 Draft Initial Proposal Circulated to Parties for Comment by 12/5/08
  - **Comments submitted to Staff**
    - FairPoint
    - Municipalities (DTC)
    - National Grid
    - NECTA
    - NH Telephone Association
    - PSNH
    - segTEL
    - City of Keene
    - Local Government Center

## AFTER COMMENCEMENT OF FORMAL RULEMAKING ON MAY 1, 2009

- PUC 1300 Rule - Commission Hearing on Initial Proposal for Regular Rules (6/18/09)
  - **Comments submitted formally to the Commission by 6/25/09**
    - Fiber Tech Networks, LLC
    - Fairpoint
    - segTEL
    - National Grid
    - NHTA
    - PSNH
    - NECTA
    - Municipalities (DTC)
    - Unitil
- PUC 1300 Rule - Commission Approval of Final Proposal for Regular Rules (7/16/09)
- **Comments submitted to JLCAR prior to or on JLCAR hearing dates (8/20/09 & 9/3/09)**
  - Fairpoint
  - Local Government Center
  - Municipalities
  - FiberTech
  - NECTA
  - PSNH
  - segTEL

On September 3, 2009, JLCAR voted to enter a preliminary objection to Final Proposal 2009-79 containing rule Puc 1300. On October 1, 2009, Commission Staff sent all parties to the docket a copy of comments received prior to or on the date of the JLCAR hearing (above) and invited additional comments for its preliminary objection response.

- **Comments received subsequent to JLCAR's preliminary objection (10/7/09)**
  - PSNH
  - Local Government Center

# **Appendix 2**

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NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Puc 1300 UTILITY POLE ATTACHMENTS

Statutory Authority: RSA 374:34-a

PART Puc 1301 PURPOSE AND APPLICABILITY

Puc 1301.01 Purpose. The purpose of Puc 1300, pursuant to the mandate of RSA 374:34-a, is to ensure rates, charges, terms and conditions for pole attachments that are just and reasonable. Nothing in this rule shall be construed to supersede, overrule, or replace any other law, rule or regulation, including municipal and state authority over public highways pursuant to RSA 231:159 et seq.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

Puc 1301.02 Applicability.

(a) Puc 1300 shall apply to: Public utilities within the meaning of RSA 362, including rural electric cooperatives for which a certificate of deregulation is on file pursuant to RSA 301:57, that own, in whole or in part, any pole used for wire communications or electric distribution; and

(b) Attaching entities with facilities attached to such poles, or seeking to attach facilities to such poles.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

PART Puc 1302 DEFINITIONS

Puc 1302.01 "Attaching entity" means a natural person or an entity with a statutory or contract right to attach a facility of any type to a pole, including but not limited to telecommunications providers, cable television service providers, incumbent local exchange carriers, competitive local exchange carriers, electric utilities, and governmental entities.

Source. #9073, INTERIM, eff 1-17-08; ss by #9615, eff 12-12-09

Puc 1302.02 "Boxing" means the placement of lines or cables on both the road side and the field side of a pole.

Source. #9073, INTERIM, eff 1-17-08; ss by #9615, eff 12-12-09

Puc 1302.03 "Commission" means the New Hampshire public utilities commission.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09 (from Puc 1302.01)

Puc 1302.04 "Extension arm(s)" means a bracket attached to a utility pole to provide support for cables or wires at a distance from the pole.

Source. #9614, eff 12-12-09

Puc 1302.05 "Facility" means the lines and cables and accompanying appurtenances attached to a utility pole for the transmission of electricity, information, telecommunications, or video programming for the public or for public safety purposes.

Source. #9614, eff 12-12-09

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Puc 1302.06 “Federal Communications Commission (FCC)” means the U.S. government agency established by the Communications Act of 1934 and charged with regulating interstate and international communications by radio, television, wire, satellite and cable.

Source. #9614, eff 12-12-09 (from Puc 1302.02)

Puc 1302.07 “Make-ready work” means all work, including but not limited to, rearrangement or transfer of existing facilities, replacement of a pole, or any other changes required to accommodate the attachment of the facilities of the party requesting attachment to the pole.

Source. #9614, eff 12-12-09

Puc 1302.08 “Pole” means “pole” as defined in RSA 374:34-a, I, namely “any pole, duct, conduit or right-of-way that is used for wire communications or electricity distribution and is owned in whole or in part by a public utility, including a rural electric cooperative for which a certificate of deregulation is on file with the commission pursuant to RSA 301:57.”

Source. #9614, eff 12-12-09 (from Puc 1302.03)

Puc 1302.09 “Prime rate” means the rate reported in the *Wall Street Journal* on the first business day of the month preceding the beginning of each calendar quarter, or the average of the rates so reported on that day.

Source. #9614, eff 12-12-09

Puc 1302.10 “Utility” means a “public utility” as defined in RSA 362:2, including a rural electric cooperative for which a certificate of deregulation is on file with the commission pursuant to RSA 301:57.

Source. #9614, eff 12-12-09

PART Puc 1303 ACCESS TO POLES

Puc 1303.01 Access Standard. The owner or owners of a pole shall provide attaching entities access to such pole on terms that are just, reasonable and nondiscriminatory. Notwithstanding this obligation, the owner or owners of a pole may deny a request for attachment to such pole:

- (a) When there is insufficient capacity on the pole;
- (b) For reasons of safety, reliability or generally applicable engineering purposes; or
- (c) Where the pole owner(s) does not possess the authority to allow the proposed attachment.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

Puc 1303.02 Owner Obligation to Negotiate. The owner or owners of a pole shall, upon the request of a person entitled to access under these rules seeking a pole attachment, negotiate in good faith with respect to the terms and conditions for such attachment.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Puc 1303.03 Requestor Obligation to Negotiate. A person entitled to access under these rules seeking a pole attachment shall contact the owner or owners of the pole and negotiate in good faith an agreement for such attachment.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

Puc 1303.04 Request for Access and Response Requirements. Requests made under these rules and pursuant to a pole attachment agreement for access to a utility's poles shall be in writing. Absent circumstances beyond the pole owner's control, such as *force majeure*, a survey for an application not exceeding 200 poles shall be completed and the results communicated to the applicant seeking to attach within 45 days of receiving a completed application and survey fee. Pole owners shall grant or deny access in writing within 45 days of receiving a complete request for access. The owner's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to the grounds in Puc 1303.01 for such denial.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

Puc 1303.05 Authorization Required. No person may attach facilities to a pole without authorization in writing from the pole owner or owners prior to attaching such facilities, in accordance with Puc 1303.04.

Source. #9614, eff 12-12-09

Puc 1303.06 Notification.

- (a) A pole owner shall provide an attaching entity no less than 60 days' written notice prior to:
- (1) Removing any of that person's facilities;
  - (2) Increasing any annual or recurring fees or rates applicable to the pole attachment; or
  - (3) Modifying the facilities other than as part of routine maintenance or in response to an emergency.
- (b) Attaching entities shall provide written notice to a pole owner or owners no less than 60 days prior to:
- (1) Modifying an existing attachment other than as part of routine maintenance or in response to an emergency, or to install a customer drop line;
  - (2) Increasing the load or weight on a pole by adding to an existing attachment, other than as part of routine maintenance or in response to an emergency, or to install a customer drop line; or
  - (3) Changing the purpose for which an existing attachment is used.
- (c) Separate and additional attachments are subject to pole attachment application and licensing processes.

Source. #9614, eff 12-12-09

Puc 1303.07 Installation and Maintenance.

- (a) All attachments shall be installed in accordance with the National Electrical Safety Code, 2007 edition, the National Electrical Code as adopted in RSA 155-A:1, IV, and the SR-1421 *Blue Book – Manual*

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*of Construction Procedures, Issue 4, Telcordia Technologies, Inc. (2007)*, and in accordance with such other applicable standards and requirements specified in the pole attachment agreement.

(b) Any attachment shall be installed and maintained to prevent interference with service furnished by the utility pole owner or owners and any other attaching entity.

(c) Where a pole or existing attachment is not in compliance with applicable standards and codes and must be brought into compliance before a new attachment can be added, the cost of bringing that pole or existing attachment into compliance shall not be shifted to the entity seeking to add a new attachment.

Source. #9614, eff 12-12-09

Puc 1303.08 Labeling of Attachments. Attaching entities shall clearly label their attachments with owner identification.

Source. #9614, eff 12-12-09

Puc 1303.09 Location of Attachments. No attaching entity shall be denied attachment solely because the only space available for attachment on a pole is below the lowest attached facility. If the owner of the lowest facility chooses to relocate its existing facilities to a lower allowable point of attachment so that a new attachment will be located above that owner's existing facilities, that owner shall bear 60 percent of the cost of relocation. The new attaching entity shall bear the remaining 40 percent of the cost of relocation, except where Puc 1303.07(c) applies.

Source. #9614, eff 12-12-09

Puc 1303.10 Boxing of Poles. Pole owners may restrict the practice of boxing poles consistent with the restrictions it places on its own practice of boxing poles as defined in the company's written methods and procedures. Such boxing shall be safely accessible by bucket trucks, ladders or emergency equipment and otherwise consistent with the requirements of applicable codes, including the National Electrical Safety Code. Boxing may be permitted only with express, written authorization by the pole owner. Pole owners shall grant or deny permission to use boxing, in writing, within 30 days of receiving a request. An owner's denial of the use of boxing shall be specific, shall include all relevant information supporting its denial, and shall explain how such information supports denial.

Source. #9614, eff 12-12-09

Puc 1303.11 Use of Extension Arms. Pole owners shall allow limited, reasonable use of extension arms by attaching entities for purposes of clearing obstacles or improving alignment of attachment facilities. Under no circumstances may extension arms be used to avoid tree trimming requirements. Any use of extension arms shall be consistent with the requirements of applicable codes, including the National Electrical Safety Code. Extension arms may be permitted only with express, written authorization by the pole owner. Pole owners shall grant or deny permission to use extension arms, in writing, within 30 days of receiving a request. An owner's denial of use of extension arms shall be specific, shall include all relevant information supporting its denial, and shall explain how such information supports denial.

Source. #9614, eff 12-12-09

Puc 1303.12 Make-Ready Timeframes. Unless otherwise agreed by parties to a pole attachment agreement, pole owners shall complete make-ready work within 150 days after any required pre-payments are

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

rendered for make-ready estimates provided to the attaching entity by the pole owner or owners. Where make-ready work requires 10 poles or less and no pole replacements, the work shall be completed within 45 days after any required pre-payments for estimates are rendered.

Source. #9614, eff 12-12-09

## PART Puc 1304 DISPUTE RESOLUTION

Puc 1304.01 Voluntary Agreements. A pole attachment agreement submitted to the commission for adjudication shall be deemed a voluntary agreement pursuant to RSA 374:34-a, VII. A party filing a petition under this part shall have the burden of proving that an agreement is not just, reasonable and nondiscriminatory.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09 (from Puc 1303.04)

Puc 1304.02 Lack of Agreement. A person requesting a pole attachment and entitled to access under these rules and unable, through good faith negotiation, to reach agreement with the owner or owners of a pole or poles subject to this chapter, may petition the commission pursuant to Puc 203 for an order establishing the rates, charges, terms and conditions for the pole attachment or attachments. Such a petition shall include the information required for complaints to the FCC made pursuant to the terms of 47 CFR § 1.1404(d) through (m) in effect on July 16, 2007.

Source. #9073, INTERIM, eff 1-17-08, ss by #9614, eff 12-12-09 (from Puc 1304.01)

Puc 1304.03 Dispute Following Agreement or Order. A party to a pole attachment agreement, or a party subject to an order of the commission establishing rates, charges, terms or conditions for pole attachments, may petition the commission pursuant to Puc 203 for resolution of a dispute arising under such agreement or order.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09 (from Puc 1304.02)

Puc 1304.04 Unauthorized Attachments. A pole owner may, but is not obligated to, petition the commission pursuant to Puc 203 for an order directing the removal of facilities that are attached to a pole without authorization pursuant to this chapter.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

Puc 1304.05 Procedure. Upon receipt of a petition pursuant to this part, the commission shall conduct an adjudicative proceeding pursuant to Puc 203 to consider and rule on the petition, and shall provide notice to affected municipalities to the extent required by RSA 541-A:39.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09 (from Puc 1304.03)

Puc 1304.06 Rate Review Standards.

(a) In determining just and reasonable rates for the attachments of competitive local exchange carriers and cable television service providers to poles owned by incumbent local exchange carriers or electric utilities under this chapter, the commission shall consider:

- (1) Relevant federal, state or local laws, rules and decisions;

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- (2) The impact on competitive alternatives;
- (3) The potential impact on the pole owner and its customers;
- (4) The potential impact on the deployment of broadband services;
- (5) The formulae adopted by the FCC in 47 CFR § 1.1409(c) through (f) in effect on July 16, 2007; and
- (6) Any other interests of the subscribers and users of the services offered via such attachments or consumers of any pole owner providing such attachments, as may be raised.

(b) In determining just and reasonable rates for all other attachments under this chapter, the commission shall consider:

- (1) Relevant federal, state or local laws, rules and decisions;
- (2) The impact on competitive alternatives;
- (3) The potential impact on the pole owner and its customers;
- (4) The potential impact on the deployment of broadband services; and
- (5) Any other interests of the subscribers and users of the services offered via such attachments or consumers of any pole owner providing such attachments, as may be raised.

Source. #9614, eff 12-12-09

Puc 1304.07 Remedies. When the commission determines just and reasonable rates under this part that differ from the rates paid by the petitioner, the commission shall order a payment or refund, as appropriate. Such refund or payment shall be the difference between the amount actually paid and the amount that would have been paid under the rates established by the commission, plus interest, as of the date of the petition.

Source. #9614, eff 12-12-09 (from Puc 1304.05)

Puc 1304.08 Interest. Refunds or payments ordered under Puc 1304.07 shall accrue simple annual interest at a rate equal to the prime rate.

Source. #9614, eff 12-12-09

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

APPENDIX

Rule	Statute
Puc 1300	RSA 374:3; RSA 374:34-a

# **Appendix 3**

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1:12 CV 054

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**  
JUN 22 1990  
NANCY DOHERTY, CLERK  
By \_\_\_\_\_  
Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

TEXAS UTILITIES ELECTRIC CO.,

Plaintiff,

vs.

HERITAGE COMMUNICATIONS, INC. AND  
HERITAGE CABLEVISION ASSOCIATES OF  
DALLAS, L.P.,

Defendants.

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CA 3-89-3080-R

ENTERED ON DOCKET  
JUN 22 1990 PURSUANT  
TO F. R. C. P. RULES  
63 AND 79a.

MEMORANDUM OPINION & ORDER

Defendants Heritage Communications, Inc. and Heritage Cablevision Associates of Dallas, L.P. (Heritage) seek to dismiss plaintiff Texas Utilities Electric Co.'s (TUElectric) claims for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). In the alternative, Heritage seeks to have this action stayed until the Federal Communication Commission (FCC) has reviewed Heritage's pending complaint. For the following reasons, the Court will stay proceedings in this case until the FCC has issued a ruling on the question of jurisdiction.

FACTS

Heritage operates a cable television system consisting of coaxial and fiber optic cable which are attached to poles owned by TUElectric. The original contract was signed in 1981 by Warner Amex Communication, Inc. (Heritage's predecessor) and Dallas Power & Light Company (TUElectric's predecessor). The contract allowed Warner to attach its cables and related equipment for its CATV



*[Handwritten signature]*

services to poles owned by DP&L.

In 1985, TUElectric discovered that Heritage had lashed fiber optic cable over its coaxial cable. Some of these cables were used for non-CATV purposes - primarily, to transmit data for the Dallas Morning News. At this time, the parties entered into another agreement which required Heritage to pay a higher rate for these non-CATV cables. Heritage paid these higher rentals in 1986 and 1987. In 1988, however, Heritage refused to pay the higher rate and in June of 1989 it filed a complaint with the FCC claiming that the rates were unjust and unreasonable under the Pole Attachment Act.<sup>1</sup> Heritage requested that the FCC reduce the rates for fiber optic attachments to those set for coaxial cable. It claimed that TUElectric was unreasonably treating cable differently based on the content of the information transmitted over the cable.

In December of 1989, TUElectric filed this action seeking (1) a declaration that its fiber optic attachment rates are valid and enforceable, (2) that the FCC has no jurisdiction over the fiber optic portion of the contract, and (3) that it is entitled to recover damages for Heritage's breach of contract.

The FCC is currently reviewing Heritage's claim.<sup>2</sup> The agency has asked the parties to brief whether or not non-cable related services are covered under the Pole Attachment Act. The FCC has indicated to the parties that it would have an interlocutory ruling on the jurisdictional issue around June 1990.

#### ANALYSIS

Heritage argues that the Pole Attachment Act gives exclusive jurisdiction to the FCC to determine the reasonableness of pole attachment agreements and thus

<sup>1</sup>47 U.S.C. §224 (1990 Supp.).

<sup>2</sup>File No. PA-89-002.

TUElectric's common law and equitable claims are preempted. Heritage alternatively argues that under the doctrine of primary jurisdiction this Court should stay all proceedings until the FCC has resolved the issues before it. TUElectric contends that the Pole Attachment Act does not apply to the defendants' data transmission business and therefore the FCC has no jurisdiction.

The principal question here is whether the FCC has jurisdiction to regulate the reasonableness of rates charged for non-cable related services. However, the introductory question must be whether the Court or the FCC should make this jurisdictional determination.

Clearly, statutory construction is a matter of law over which courts exercise final authority.<sup>3</sup> In this instance, there is no doubt that an interpretation of the Pole Attachment Act is necessary, thus leading to the conclusion that the court should determine the jurisdictional issue.

However, under the doctrine of primary jurisdiction, when disputes arise in an area that is subject to regulation, the courts should allow the agency the opportunity to first determine if those issues are within the agency's jurisdiction.<sup>4</sup> Deference to the agency under the doctrine of primary jurisdiction is even more appropriate when the question is already pending before the agency and when the agency's ruling would be of material aid to the court in resolving the remaining issue.<sup>5</sup>

In this case, the jurisdictional issue is currently pending before the

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<sup>3</sup>See, e.g., *Tex. Power & Light v. FCC*, 784 F.2d 1265, 1269 (5th Cir. 1986).

<sup>4</sup>*Federal Power Commission v. Louisiana Power & Light Co.*, 406 U.S. 621, 624 (1971); *Miss. Power & Light Co. v. United Gas Pipe Line*, 532 F.2d 412, 417 (5th Cir. 1976); *Usery v. Tamiami Trail Tours, Inc.*, 531 F.2d 224, 242 (5th Cir. 1976).

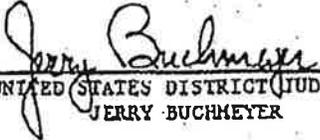
<sup>5</sup>*Miss. Power & Light Co.*, 532 F.2d at 420.

FCC.<sup>6</sup> The rates charged for pole attachments are subject to regulation by the FCC. The FCC with its expertise in this area is better equipped than the Court to make the initial determination of whether its jurisdiction extends to non-cable related services. Furthermore, a determination made by the agency, although it will not be the final word, will greatly aid this Court in resolving all the issues presented this action.

Accordingly, for these reasons, this case is stayed until the FCC has issued a ruling on the jurisdictional issue.

SO ORDERED.

SIGNED THIS 19 DAY OF JUNE, 1990.

  
UNITED STATES DISTRICT JUDGE  
JERRY BUCHMEYER

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<sup>6</sup>The FCC's letter of March 12, 1990 tells the parties that they must brief the jurisdictional issue. In addition, the FCC implies in the letter that it would have jurisdiction of non-cable pole attachments under the Pole Attachment Act.

United States District Court  
For the District of New Hampshire

Public Service Company of New Hampshire

Plaintiff

vs.

Time Warner Entertainment Company, L.P.

Defendant

Civil Action No. 12-cv-98-PB

**AFFIDAVIT OF DAVID A. ANDERSON, ESQ.**

I, David A. Anderson, hereby depose and say as follows:

1. I am a partner with the law firm of Pierce Atwood LLP, One New Hampshire Avenue, Suite 350, Portsmouth, N.H. 03801, attorneys of record for the Defendant in this matter, Time Warner Entertainment Company, L.P.

2. Attached hereto as Exhibit A is a true and accurate copy of the Petition for Resolution of Dispute (“Petition”), including the Affidavit of Julie Patterson Laine (“Affidavit”) and the exhibits to both the Petition and the Affidavit, filed with the New Hampshire Public Utilities Commission on March 30, 2012.

Dated: April 2, 2012

/s/ David A. Anderson  
David A. Anderson

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

Subscribed and sworn to, before me,

April 2, 2012

/s/ Kelly M. Dallaire  
Kelly M. Dallaire, Notary Public  
State of New Hampshire  
My Commission Expires May 6, 2014

**Certificate of Service**

I hereby certify that a copy of the foregoing was served on the following on this 2<sup>nd</sup> day of April, 2012, and in the manner specified herein:

Electronically Served Through ECF:

Charles P. Bauer, Esquire  
Gallagher, Callahan & Gartrell, P.C.  
214 North Main Street  
P.O. Box 1415  
Concord, NH 03302-1415

/s/ David A. Anderson  
David A. Anderson

**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-\_\_\_\_

**PETITION FOR RESOLUTION OF DISPUTE**

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March 30, 2012

## INTRODUCTION

Public Service Company of New Hampshire (“PSNH”) is seeking to impose unlawfully high rents on pole attachments by Time Warner Entertainment Company, L.P. d/b/a Time Warner Cable (“TWC”) in New Hampshire. PSNH’s unlawfully high pole attachment rates appear to be based upon the superseded Federal Communications Commission (“FCC”) formula governing rates for pole attachments by telecommunications carriers (“Historic FCC Telecom Rate Formula”). Use of this outdated formula is not supported by New Hampshire or federal law and runs counter to this State’s clearly established policy to promote broadband deployment and the availability of competitive services throughout the State. Indeed, application of this Commission’s pole attachment rate review standards, which necessarily take into account both the FCC’s recent modification of its formula governing attachments by telecommunications carriers and the effect of pole rates on competition and broadband deployment, compels adoption of a uniform low rate for all pole attachments regardless of the services flowing over those attachments. At the very least, any new approach for setting pole rates for cable provided voice services in New Hampshire is a matter for this Commission, and not PSNH, to decide.

As this Commission recognizes, broadband penetration in New Hampshire, while robust, is not yet universal. Many residents in rural portions of the State do not yet enjoy the full benefits of advanced broadband services, such as competitively priced voice services. Numerous studies have shown and the New Hampshire Department of Resources and Economic Development has recognized that pole attachment rates are a significant factor in decisions to deploy broadband and offer competitive services. Permitting PSNH (and other New Hampshire pole owners likely to follow suit) to increase pole rents now would thwart the State’s efforts to ensure that all of its residents benefit from the availability of high speed broadband services.

To accelerate broadband build-out and eliminate arbitrary deterrents to cable operators seeking to offer advanced broadband services, in April 2011, the FCC itself retreated from its bifurcated pole attachment rate structure. The FCC revised its formula for calculating the rates for pole attachments used to provide telecommunications in order to reduce the rates. Likewise, every certified state that has considered adopting the FCC's historic telecom surcharge has rejected it, and public interest groups charged with protecting electric utility rate payers have consistently supported elimination of a telecom surcharge and adoption of a uniform low pole rate such as that produced using the FCC cable formula.

Even when the FCC's bifurcated rate structure governed rates in New Hampshire (during the Commission's Interim rules and prior to the State's certification), the FCC's telecommunications rate formula did not apply to TWC's attachments. At no time has TWC provided switched telecommunications services in New Hampshire, and TWC's Voice over Internet Protocol ("VoIP") services were never deemed "telecommunications" services for pole rate purposes. As determined by the FCC and confirmed by the United States Supreme Court, cable operators that offer comingled broadband and cable services do not lose the protection of the FCC cable rate formula. And, as PSNH well knows, the FCC has not ruled that VoIP attachments may be priced using the telecommunications rate formula. Nor has the FCC ever classified VoIP services as telecommunications or telecommunications services; in fact, it has declined to do so on a number of occasions. While this Commission asserted jurisdiction over VoIP under state law in August 2011, it did so for the limited purpose of imposing certain consumer related regulations, and not in the context of pole attachments, where allowing higher pole rates undermines broadband deployment and increases pressure on consumer prices.

New Hampshire Statutes RSA 374:34-a requires this Commission to resolve disputes governing pole attachment rates, and to ensure that such rates are “just and reasonable.” The New Hampshire Code of Administrative Rules PUC 1304.06 sets forth six factors the Commission is to consider in establishing just and reasonable pole attachment rates. Notwithstanding the Commission’s clearly established authority and exclusive jurisdiction over pole attachment rate disputes, rather than seeking guidance from this Commission as to the appropriate amount of its attachment rates under governing PUC rules, PSNH unilaterally bifurcated its attachment rate structure, asserting that TWC’s alleged provision of “telecommunications services” entitled it to collect rates based on the FCC’s Historic Telecom Rate Formula. When TWC refused to pay the unlawful new rates and associated late payment fees, PSNH filed a seriously flawed breach of contract Writ of Summons in the Merrimack County Superior Court . This Commission, and not a court, is the appropriate body to determine pole attachment rates under its new pole attachment rate review standards.

Application of the Commission’s rate review standards compels rejection of PSNH’s telecommunications surcharge and adoption of the FCC’s cable rate formula, which balances the goals of promoting broadband and other advanced communications services with the interest in ensuring that pole owners are fairly compensated and electric rate payers are not unduly burdened. Moreover, incumbent local exchange carriers, such as FairPoint, which also own a substantial number of the state’s poles, would not suffer any competitive harm. A single rate approximating the FCC cable rate is necessary to ensure that New Hampshire does not fall behind in its effort to promote ubiquitous broadband deployment and the development of associated advanced communications services, such as VoIP.

For these and other reasons set forth below, the Commission should assert jurisdiction over this dispute and establish a pole attachment rental rate for PSNH using the FCC's cable rate formula.

## **I. PARTIES**

1. TWC is a cable television operator that provides cable television and other lawful communications services over cable systems to customers in the State of New Hampshire. Time Warner Entertainment Company, L.P. is a limited partnership and Time Warner Cable Inc., its parent, is a Delaware corporation, both with principal places of business at 60 Columbus Circle, New York, New York 10023.

2. Respondent PSNH is an investor-owned electric utility that generates, transmits, distributes, and sells electricity to its customers in the State of New Hampshire. PSNH owns and controls utility poles located throughout the State of New Hampshire that are used by PSNH to distribute electricity to its customers. PSNH is a New Hampshire corporation with a principal place of business at 780 North Commercial Street, Manchester, New Hampshire 03101.

3. TWC's communications facilities are connected to poles owned by PSNH in certain locations within the State of New Hampshire. Certain poles to which TWC is attached are solely owned by PSNH and others are jointly owned with Verizon New England, Inc.

4. TWC and PSNH are parties to three pole attachment agreements: (1) Pole Attachment Agreement dated February 6, 2004 between Verizon New England Inc. and PSNH and Time Warner Entertainment Co., L.P. ("Pole Attachment Agreement 1"); (2) Aerial License Agreement dated October 27, 1998 between New England Telephone and Telegraph Company, d/b/a Bell Atlantic-New England and Public Service Company of New Hampshire and Contoocook Valley Telephone Company, Inc. and State Cable TV Corporation ("Pole

Attachment Agreement 2”); and (3) Aerial License Agreement dated August 17, 1993 between New England Telephone and Telegraph Company and Public Service Company of New Hampshire and Grassroots Cable Systems, Inc. (“Pole Attachment Agreement 3”). Copies of the agreements jointly referred to herein as “Pole Attachment Agreements,” are attached as Exhibit 1 to the Affidavit of Julie Laine (hereinafter “Laine Aff.”), Attachment A hereto.

## II. STATEMENT OF AUTHORITY

5. This Commission has jurisdiction over this action under the provisions of the New Hampshire Pole Attachment Act, including but not limited to New Hampshire Revised Statutes Annotated (RSA) 374:34-a.

6. The Commission’s jurisdiction over the types of attachments regulated under 47 U.S.C. § 224 was established pursuant to RSA 374:34-a and Section 224(c) of the Communications Act of 1934, as amended (47 U.S.C. § 224(c)), upon the Commission’s certification to the Federal Communications Commission (“FCC”) on January 23, 2008 that appropriate rules implementing the Commission’s regulatory authority over pole attachments were effective. That certification preempts the FCC from accepting complaints under Section 224(c).<sup>1</sup>

7. PSNH is a public utility as defined in RSA 362:2. PSNH owns and controls utility poles in the State of New Hampshire.

8. TWC is a cable television service provider that has attachments on PSNH poles in certain areas in the State of New Hampshire pursuant to the Pole Attachment Agreement(s). *See supra* ¶ 4.

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<sup>1</sup> See *New Hampshire Joins States That Have Certified That They Regulate Pole Attachments*, 23 FCC Rcd 2796 (released Feb. 22, 2008).

9. TWC and PSNH have a dispute that has arisen under the Pole Attachment Agreements.

10. Under RSA 374:34-a and PUC 1304.03, the Commission has jurisdiction over all aspects of this Petition.<sup>2</sup>

### III. FACTS

11. TWC provides various communications services over its cable systems to subscribers in New Hampshire and elsewhere, including traditional cable television service, broadband Internet access service and other state-of-the-art services such as high-definition video and video-on-demand. Laine Aff. ¶ 4. TWC began to provide interconnected Voice over Internet Protocol (“VoIP”) service in parts of the State at the end of 2005. *Id.* ¶ 6. Although TWC has continued to expand the areas in which it provides VoIP service, it does not yet offer the service everywhere it provides video and Internet services. *Id.* At no time has TWC provided circuit switched telecommunications services in New Hampshire. *Id.* ¶ 7.

12. In the last five years alone, TWC has invested approximately \$12 million dollars to maintain, expand and upgrade our cable system facilities within New Hampshire so it can deliver increased video, broadband Internet access, voice and other advanced services to an ever-growing percentage of our customers. Laine Aff. at ¶ 5. This is significant, especially given the number of homes passed and customers served. In New Hampshire, TWC’s facilities pass 83,000 homes, and TWC provides services to approximately 60,000 subscribers in the state. *Id.*

13. TWC’s cable television system facilities are currently attached to poles belonging to several New Hampshire pole owners, including PSNH. More than 97 percent of the PSNH poles

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<sup>2</sup> The Commission is authorized and directed by the statute to determine just and reasonable pole attachment rates and to order payment or a refund, as appropriate, plus interest, as of the date of the petition. RSA 374:34-a; PUC 1304.07.

to which TWC is attached are owned jointly with FairPoint Communications, Inc. (“FairPoint”).  
*See* Laine Aff. ¶ 8 and Ex. 2 thereto.

14. TWC pays PSNH annual recurring pole attachment rent for the use of PSNH’s poles pursuant to the Pole Attachment Agreements. *See supra* ¶ 4.

15. Pole Attachment Agreement 1 includes an Appendix I setting forth, *inter alia*, PSNH’s annual attachment fees of \$4.10 per jointly owned and jointly used PSNH and FairPoint pole, and \$8.20 per solely owned PSNH pole. Pole Attachment Agreement 2 includes an Appendix I setting forth, *inter alia*, PSNH’s annual attachment fees of \$3.42 per jointly owned and jointly used PSNH and FairPoint pole and \$6.84 per solely owned PSNH pole. Laine Aff. Ex. 1. TWC has been unable to locate its copy of Appendix I to Pole Attachment Agreement 3, the oldest of the three agreements. Laine Aff. ¶ 11. However, based upon the date of such Agreement, upon information and belief, the attachment fees and charges set forth therein are similar to or less than the fees set forth in Agreement 2, Appendix I. *Id.*

#### **A. Invoices and Payments**

16. For each bi-annual billing period beginning January 1, 2006 to June 30, 2006 through January 1, 2012 to June 30, 2006, PSNH has sought to change its pole attachment fees by providing invoices to TWC that included new annual per pole rent charges which were to take effect at the beginning of the next calendar year. *See* Laine Aff. ¶ 14 and Ex. 2 (sample invoices) (hereinafter jointly referred to as “Invoices”). In each such Invoice, PSNH listed attachment fee amounts for “TV & Internet” and higher attachment fee amounts for “Communications.” *Id.* The fees also differed depending on whether a pole was “solely-owned” by PSNH, “jointly-owned” with another pole owner (typically the incumbent telephone company) or owned by PSNH and two other pole owners (“tri-owned”). *Id.* In addition, the

invoices listed different charges for Communications in Urbanized and Non-Urbanized areas.

*Id.*

17. PSNH's most recent Invoice seeks to charge \$10.07 for TV and Internet attachments to PSNH solely owned poles and \$22.96 for Communications attachments to PSNH solely owned poles. Laine Aff. ¶ 15 and Ex. 2. Rates for jointly owned poles are half these amounts, reflecting FairPoint's 50 percent ownership in the poles. *Id.*

18. Among other things, the Invoices were insufficient to increase rates under the parties' Pole Attachment Agreements. Article III of both Pole Attachment Agreement 2 and Pole Attachment Agreement 3 required "separate execution of Appendix I" to effect changes, which PSNH did not seek, or obtain. Laine Aff. ¶12 and Ex. 1. In addition, PSNH did not provide TWC with sufficient notice, as required by Section 3.1.2 of Pole Attachment Agreement 1, or an updated Appendix I following the effective date of notices of the attachment fee increases, as required by Section 3.1.3 of Pole Attachment Agreement 1. Laine Aff. ¶ 12.

19. As set forth above, each of the Invoices identified different rates for "TV & Internet" as opposed to "Communications." *Supra* ¶ 17. Upon information and belief, these different rates charged by PSNH were intended to reflect the pole attachment rental rates established using the FCC formula for calculating the maximum pole attachment rate that utilities may impose on cable operators as set for the in 47 C.F.R. § 1.1409(e)(1) ("FCC Cable Rate Formula") and the FCC's historic formula for calculating the maximum pole attachment rate that utilities may impose on telecommunications carriers as previously set forth in 47 C.F.R. § 1.1409(e)(2) (superseded) ("Historic FCC Telecom Rate Formula"), respectively. *See* Attachment B hereto (FCC rules setting forth the formulas).

20. As described more fully below and as reflected by PSNH's rates, the Historic FCC Telecom Rate Formula generally results in higher pole rental rates than the FCC Cable Rate Formula. The FCC recently determined that this "surcharge" imposed upon providers of telecommunications services hindered its important federal statutory objectives and modified the Historic FCC Telecom Rate Formula to "better enable providers to compete on a level playing field, [ ] eliminate distortions in end-user choices between technologies, and lead to provider behavior being driven more by underlying economic costs than arbitrary price differentials."<sup>3</sup> The FCC thus revised its formula for calculating the maximum pole attachment rate that utilities may impose on telecommunications carriers as set forth in 47 C.F.R. § 1.1409(e)(2) (as amended) ("Revised FCC Telecom Rate Formula"). See Attachment B.

21. PSNH's Invoices continued with these apparent FCC attachment classifications in setting rates after this Commission assumed pole attachment jurisdiction in 2008, after this Commission's pole attachment rules became effective in December 2009, and after the FCC's adoption of the Revised Telecom Rate Formula. See Laine Aff. ¶ 22 and Ex. 3 (letter dated Nov. 18, 2011 from PNSH to Time Warner).

22. At all times relevant to this Petition, TWC has objected to payment of pole attachment rates based on PSNH's classification of certain TWC attachments as telecommunications and apparent use of the FCC's Historic Telecom Rate Formula to calculate those rates. See Laine Aff. ¶ 17 and Ex. 4 (attaching Letter dated Apr. 3, 2007 to John Pearson from Julie Patterson; Letter dated Aug. 6, 2008 to Mr. John Pearson from Julie P. Laine f/k/a Julie Patterson; Letter to John Pearson from Julie Laine f/k/a Julie Patterson dated Jan. 14, 2011). Consistent with its notice to PSNH that the FCC's Historic Telecom Rate Formula did

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<sup>3</sup> *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, ¶ 147 (2011) ("April 2011 FCC Order").

not apply because TWC was not providing telecommunications services, TWC paid the rates charged by PSNH for “TV & Internet,” which rates appeared to have been calculated using the FCC Cable Rate Formula. Laine Aff. ¶ 18. TWC has continued to pay for all PSNH attachments at the amount charged for TV & Internet attachments to the present. *Id.*

23. At all times relevant to this Petition, TWC’s refusal to pay a telecommunications surcharge, and payment for all attachments at the rate that PSNH charged for TV & Internet service was appropriate.

24. At no time in New Hampshire has the FCC’s Historic Telecom Rate Formula applied to pole attachments over which cable, Internet access services, and VoIP services, are transmitted. Indeed, as discussed below, the FCC has never classified VoIP services as telecommunications services, either as a general matter or for pole attachment purposes. In addition, the PSNH Invoices sought to impose a telecommunications surcharge in communities where TWC has never offered any type of voice service. Laine Aff. ¶ 19.

25. TWC has paid PSNH over \$1.2 million in pole attachment fees for billing periods dating from January 1, 2006 to the present, for all PSNH invoiced attachments at the PSNH rate for TV & Internet. *See* Laine Aff. ¶ 20 and Ex. 3.

26. Throughout this period, PSNH continued to assess TWC for alleged underpayments and to impose late payment charges on such alleged underpayments. Laine Aff. ¶ 21 and Ex. 3 (PSNH Nov. 2011 Letter).

27. In a letter dated November 18, 2011, PSNH stated its position that, “[b]ecause Time Warner’s attachments are for the purpose of providing telecommunications service, Time Warner is responsible for payment of the rate applicable to attachments used for the provision of telecommunications services.” Laine Aff. ¶ 22 and Ex. 3.

28. Other poles to which TWC is attached are owned by FairPoint, Central Maine Power, National Grid, Contoocook Valley Telephone, Littleton Water and Light, and Municipal Electric Department. No pole owner in New Hampshire other than PSNH has sought to impose a bifurcated rate structure for TWC television, Internet and voice services or a surcharge on TWC voice services. Laine Aff. ¶¶ 23-24.

### **B. Regulation of Pole Attachment Rental Rates in New Hampshire**

29. Notwithstanding the parties' Pole Attachment Agreements and the Notices, pursuant to RSA 374:34-a, the rates that PSNH may charge for pole attachments have at all times been limited by state or federal law.

30. New Hampshire enacted RSA 374:34-a pertaining to pole attachments on July 16, 2007 (hereinafter "New Hampshire Pole Attachment Act"). The New Hampshire Pole Attachment Act directs the Commission to adopt rules to carry out provisions of the New Hampshire Pole Attachment Act and to regulate and enforce rates, charges, terms and conditions for such pole attachments "to provide that such rates, charges, terms and conditions are just and reasonable." *Id.*

31. The Commission adopted "Interim" pole attachment rules on January 17, 2008. *See* PUC 9073, INTERIM, eff. Jan. 17, 2007, superseded by PUC 9614, eff. Dec. 12, 2009. The "Interim" rules provided that "[i]n determining just and reasonable rates under this Chapter, the commission shall apply the standards and formulae adopted by the FCC in 47 CFR 1.1409(c) through (f) in effect on July 16, 2007." PUC 9073, INTERIM, 1304.04, eff. Jan. 17, 2008.

32. The Commission certified to the FCC its intent to regulate pole attachments on January 23, 2008, which certification was accepted by the FCC on February 22, 2008.<sup>4</sup>

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<sup>4</sup> *New Hampshire Joins States That Have Certified That They Regulate Pole Attachments*, 23 FCC Rcd 2796 (released Feb. 22, 2008).

33. On December 12, 2009, the Commission's current pole attachment rate review standards became effective. *See* PUC 1304.06. Under PUC 1304.06, the Commission must consider six factors in resolving a pole rate dispute including not just the FCC's formulae in effect on July 16, 2007, but also, *inter alia*, relevant federal, state or local laws, rules and decisions, the impact on competitive alternatives, the potential impact on the deployment of broadband services and the potential impact on the pole owner and its customers. The Commission has not had occasion to apply these standards to date. However, consideration of the relevant factors supports TWC's continued payment of PSNH's attachment rate applicable to TV & Internet, which appear to have been calculated using the FCC Cable Rate Formula.

34. In August 2011, the Commission issued an order concluding that VoIP based services provided by cable operators are "telecommunications services" under New Hampshire state law for the limited purpose of applying certain consumer protection requirements.<sup>5</sup> In the Commission's words, such limited regulation was "consistent with the New Hampshire State Constitution provisions for free and fair competition."<sup>6</sup> The Commission's order did not address the pole attachment rates applicable to VoIP services.

35. State legislation currently is pending that would reverse the Commission's classification of VoIP under New Hampshire law, but would not disturb the Commission's jurisdiction over pole attachments.<sup>7</sup>

36. Before the Commission's January 2008 certification to the FCC establishing the Commission's jurisdiction over pole attachments and until December 12, 2009,<sup>8</sup> the FCC's rules

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<sup>5</sup> Order Finding Jurisdiction and Requiring Limited Jurisdiction, No. 25,262 (Aug. 11, 2011) at 59 (hereinafter "August 11 PUC Order").

<sup>6</sup> *Id.*

<sup>7</sup> S.B. 48, 2011 Session (N.H. 2012) (passed by Senate, Jan. 18, 2012), *available at* <http://www.gencourt.state.nh.us/legislation/2012/SB0048.pdf> (addressing state regulation of telephone service providers and clarifying the authority of the Public Utilities Commission to regulate pole attachments).

and policies governed pole attachment rates, terms and conditions in New Hampshire. Those FCC rules applied different attachment fee formulas to (i) attachments by cable operators (including those providing broadband Internet access services) (the “FCC Cable Rate Formula”) and (ii) attachments by cable operators over which telecommunications service is provided and attachments by telecommunications carriers (the “Historic FCC Telecom Rate Formula”).

37. At no time have the applicable FCC or New Hampshire Commission pole rate rules required cable operators providing VoIP service to pay a higher pole attachment rate than cable operators providing cable television and Internet services. To the contrary, the applicable Commission rules and policies derive from the FCC’s pole attachment rate rules and policies, which have never required payment of a telecommunications surcharge by cable operators that provide VoIP services.

### C. Court Complaint

38. On February 1, 2012, PSNH filed a Writ of Summons asserting breach of contract and debt claims against TWC in Merrimack County Superior Court. *See Public Serv. Co. of New Hampshire v. Time Warner Entm’t Co.* (hereinafter “Court Compl.”), which is attached hereto as Attachment C.<sup>9</sup> *See also* Laine Aff. ¶ 25.

39. PSNH claims in the Court Complaint that TWC owes PSNH damages in the amount of \$1,096,226.20 as of January 16, 2012 and that this amount will continue to accrue until paid in full. Court Compl. ¶ 18. The Court Complaint does not state when the alleged damages began to accrue or otherwise explain the basis of PSNH’s claim. However, based upon

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<sup>8</sup> New Hampshire adopted an interim rule governing pole attachment rental rates effective January 17, 2008, which provided that the FCC formulas would govern pole attachments in New Hampshire until such time as the Commission adopted permanent regulations. PUC 9073 INTERIM, eff. Jan. 17, 2008, superseded by PUC 9614, eff. Dec. 12, 2009.

<sup>9</sup> TWC removed the Superior Court Complaint to the United States District Court for the District of New Hampshire, and will be filing a motion to dismiss or stay that case because the dispute is solely within this Commission’s jurisdiction.

correspondence between the parties, TWC has reason to believe that PSNH's Court Complaint is an illegal attempt to extract unjust and unreasonable pole attachment rates from TWC based upon its provision of VoIP services in certain areas in New Hampshire. *See* Laine Aff. ¶ 25 and Ex. 3.

40. On March 12, 2012, TWC removed the Court Complaint to the United States District Court for the District of New Hampshire ("District Court"), which is attached hereto as Attachment D. TWC intends to request that the District Court dismiss the complaint based on this Commission's exclusive jurisdiction over pole attachment rental disputes and alternatively, based on the Commission's primary jurisdiction over matters raised in the Complaint.

41. Pursuant to RSA 508:4, the statute of limitations for breach of contract claims in New Hampshire is three years. Accordingly, the period in dispute between the parties in the Court Complaint is from February 1, 2009 to January 31, 2012.

#### **IV. ARGUMENT**

##### **A. Under the Commission's Six Factor Rate Review Standard, PSNH Pole Attachment Rates Should Be Set Using the FCC Cable Rate Formula for All Communications Attachments**

42. New Hampshire's pole attachment statute, enacted in 2008, directs the Commission to adopt and enforce rules ensuring that pole attachment rates are just and reasonable. RSA 374:34-a. In doing so, the statute affords the Commission discretion to adopt a single formula or formulae for apportioning costs.<sup>10</sup> The Commission, in adopting PUC 1304.06, chose not to adopt the FCC's historic bifurcated rate structure for pole attachments or to impose a telecom surcharge on VoIP. Instead, it adopted a six factor standard for just and reasonable attachment rates. This standard affords the Commission flexibility to reject the telecom surcharge imposed by PSNH based on the FCC's Historic Telecom Formula and adopt instead a single rate formula

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<sup>10</sup> RSA 374.34-aat III.

that is consistent with its stated goals of competitive broadband deployment, the FCC Cable Rate Formula. As set forth herein, application of the six factors for just and reasonable attachment rates set forth in RSA 374.34-a compels rejection of a telecom surcharge and adoption of the FCC Cable Rate Formula.

***1. Relevant federal, state or local laws, rules or decisions.***

43. The first standard to be considered in establishing just and reasonable attachment rates for cable operators under the Commission's rules – relevant federal, state or local laws, rules or decisions – supports rejection of telecommunications rate surcharge and adoption of the FCC Cable Rate Formula for all cable pole attachments regardless of the services delivered over such attachments.<sup>11</sup> As set forth more fully below, the FCC's Cable Rate Formula has been employed by the FCC for over three decades, upheld by courts against utility takings claims, applied to comingled cable and broadband services, and adopted by numerous certified states. In contrast, other states that have considered the FCC's Historic Telecom Rate Formula have rejected it, as did the FCC itself in its 2011 landmark order amending its rules. Moreover, this Commission's recent decision to classify VoIP as telecommunications services under state law for limited regulatory purposes does not alter the conclusion that pole rents for all services in New Hampshire should be set using the FCC Cable Rate Formula.

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<sup>11</sup> New Hampshire's incumbent local exchange carriers (ILECs) own a significant percentage of the poles in New Hampshire, either individually or jointly with electric companies. In fact, as set forth above, the majority of PSNH poles to which TWC is attached are jointly owned by PSNH and FairPoint. In recognition of this fact, the Commission's rules do not include ILECs as attaching entities governed by the same rates as cable operators.

**a. The FCC Modified the Historic Telecom Rate Formula to Eliminate the Telecom Surcharge and Produce Rates That Approximate the Cable Rate**

44. In April 2011, the FCC modified the Historic Telecom Rate Formula so as to produce rates that approximate rates produced using the FCC's Cable Rate Formula.<sup>12</sup> In doing so, it sought to “minimize the difference in rental rates paid for attachments that are used to provide voice, data, and video services, and thus ... remove market distortions that affect attachers' deployment decisions.”<sup>13</sup> In support of its decision, the FCC found that under the FCC Historic Telecom Rate Formula, “cable operators have been arbitrarily deterred from offering new, advanced services” because of the “financial impact” that could result from application of a higher telecom rate.<sup>14</sup> Thus, the FCC determined that “implementing a low and more uniform rate” would “eliminate competitive disadvantages.”<sup>15</sup> It also sought to “reduce disputes and costly litigation about the applicability of ‘cable’ or ‘telecommunications’ rates to broadband, voice over Internet protocol, and wireless services that distort attachers' deployment decisions.”<sup>16</sup>

45. At the same time, the FCC ensured that the Revised FCC Telecom Rate Formula adequately compensated pole owners,<sup>17</sup> preserved “appropriate incentives” for them “to invest in poles,”<sup>18</sup> and did not impose an undue burden on utility ratepayers.<sup>19</sup>

46. The FCC issued its decision in light of “nearly a decade of experience” applying the historic telecom formula.<sup>20</sup> This Commission has recognized the FCC's authority in the subject matter of pole attachments.<sup>21</sup>

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<sup>12</sup> April 2011 FCC Order ¶ 126.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* ¶ 174.

<sup>15</sup> *Id.* ¶ 176.

<sup>16</sup> *Id.* ¶ 174.

<sup>17</sup> *Id.* ¶¶ 182-198.

<sup>18</sup> *Id.* ¶ 151.

<sup>19</sup> *Id.* ¶ 149.

47. Due to specific requirements in its authorizing statute pertaining to cost allocation, the FCC did not adopt the Cable Rate Formula for attachments used to provide telecommunications services, but instead modified the telecommunications formula to produce rates approximating rates produced using the cable formula.<sup>22</sup> It did this by modifying the cost measures that factor into the telecommunications formula.<sup>23</sup> This Commission is not so constrained. It is free to adopt a single formula under its authorizing statute. *See* RSA 374:34-a (III) (“The commission shall adopt rules ... to carry out the provisions of this section, including appropriate formula or formulae for apportioning costs.”).

**b. Under Federal Law, the FCC Cable Rate Formula Governs  
Comingled Cable and Broadband Service, Including VoIP**

48. The FCC long has held that cable operators that offer broadband services along with cable service do not lose the protection of the FCC Cable Rate Formula.<sup>24</sup> In 1998, the FCC found that increasing the cable pole rate for the provision of Internet services would conflict with Congressional objectives to promote the deployment of broadband and new advanced services:

In specifying this rate, we intend to encourage cable operators to make Internet services available to their customers. We believe that specifying a higher rate might deter an operator from providing non-traditional services. Such a result would not serve the public interest. Rather, we believe that specifying the [cable rate] will encourage greater competition in the provision of Internet service and greater consumer benefits.<sup>25</sup>

49. In 2002, the U.S. Supreme Court agreed, declaring that the FCC’s interpretation was consistent with Congress’ general instruction to “encourage the deployment” of broadband

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<sup>20</sup> *Implementation of Section 224 of the Act*, Notice of Proposed Rulemaking, 22 FCC Rcd 20195, ¶ 2 (2007).

<sup>21</sup> *See, e.g.*, Interim Rules adopting FCC pole attachment rate formulas.

<sup>22</sup> April 2011 FCC Order ¶ 149.

<sup>23</sup> *Id.* ¶ 161.

<sup>24</sup> *See Texas Utils. Elec. Co. v. FCC*, 997 F.2d 925, 936 (D.C. Cir. 1993).

<sup>25</sup> *Implementation of Section 703(e) of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 6777, ¶ 32 (1998).

Internet capability and, if necessary, “to accelerate deployment of such capability by removing barriers to infrastructure investment.”<sup>26</sup>

**c. Courts Have Upheld the FCC Cable Rate Formula against Pole Owner Challenges**

50. The FCC Cable Rate Formula has been upheld as constitutional by the United States Supreme Court.<sup>27</sup>

51. A common argument of pole owners is that the FCC Cable Rate Formula is a subsidy because it does not require attachers to pay a larger share of pole costs. This contention has been uniformly rejected by courts that have considered it.<sup>28</sup>

52. In a decision involving pole attachment rates imposed by Alabama Power, the Eleventh Circuit confirmed that the FCC Cable Rate Formula provides adequate compensation for utilities. “The known fact is that the Cable Rate requires the attaching cable company to pay for any ‘make-ready’ costs and all other marginal costs (such as maintenance costs and the opportunity cost of capital devoted to make-ready and maintenance costs), in addition to some portion of the fully embedded cost.”<sup>29</sup>

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<sup>26</sup>*NCTA v. Gulf Power Co.*, 534 U.S. 327, 339 (2002) (“*Gulf Power*”). The FCC’s decisions preserving the Cable Rate Formula following the 1996 Act helped to ignite over \$180 billion in cable broadband investment that has transformed the nation’s communications infrastructure and enabled the first ever successful facilities-based voice competition to the ILEC monopoly – cable VoIP. It is estimated that consumers saved over \$100 billion from 2003 to 2011 from this new competition. See Cable industry investment statistics, available at <http://www.ncta.com/Statistics.aspx>. See also Dr. Michael D. Pelcovits and Daniel E. Haar, Microeconomic Consulting & Research Associates, Inc., “Consumer Benefits from Cable-Telco Competition,” November 2007, at 19, available at [http://www.micradc.com/news/publications/pdfs/Updated\\_MiCRA\\_Report\\_FINAL.pdf](http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf).

<sup>27</sup> *FCC v. Florida Power Corp.*, 480 U.S. 245, 253-54 (1987).

<sup>28</sup> See, e.g., *id.* (finding it could not “seriously be argued, that a rate providing for the recovery of fully allocated cost, including the cost of capital, is confiscatory”); *Alabama Power Co. v. FCC*, 311 F.3d 1357, 1368-69 (11th Cir. 2002); *Detroit Edison Co. v. Michigan Public Serv. Comm’n*, 1998 Mich. App. LEXIS 832, at \*6-7 (Nov. 24, 1998), *aff’g*, *Consumers Power Co., Detroit Edison Co.*, Setting Just and Reasonable Rates for Attachments to Utility Poles, Ducts and Conduits, Case Nos. U-010741, U-010816, U-010831, Opinion and Order, 1997 Mich. PSC LEXIS 26 (Feb. 11, 1997); *Trenton Cable TV, Inc. v. Missouri Public Serv. Co.*, PA-81-0037, ¶ 4 (rel. Jan. 25, 1985) (“Since any rate within the range assures that the utility will receive at least the additional costs which would not be incurred but for the provision of cable attachments, that rate will not subsidize cable subscribers at the expense of the public.”).

<sup>29</sup> *Alabama Power*, 311 F.3d at 1368-69.

**d. States and Public Interest Groups Recognize the FCC Cable Rate Formula as the Appropriate Methodology for Calculating Pole Attachment Rents**

53. The majority of certified states have adopted the FCC's Cable Rate Formula for all attachments. Not one state has adopted the FCC's Historic Telecom Formula. In rejecting a bifurcated rate structure, New York held that the telecommunications formula "would undermine efforts to encourage facilities-based competition and to attract business to New York."<sup>30</sup> Similarly, as explained by the state of California, "there is generally no difference in the physical connection to the poles or conduits attributable to the particular service involved ... applying a consistent rate for use of cable attachments, including provision of telecommunications services ... promotes the incentive for facilities-based local exchange competition through the expansion of existing cable services."<sup>31</sup> In 2005, the Connecticut Department of Public Utility Control also rejected utility efforts to impose a pole rate surcharge for additional services.<sup>32</sup> Both the Oregon and Utah PSCs adopted pole rent formulas for all attachers and services based on the cable formula and filed comments in the federal rulemaking proceeding that such pole rates fairly

<sup>30</sup> *Proceeding on Motion of the Commission as to New York State Electric & Gas Corporation's Proposed Tariff Filing to Revise the Annual Rental Charges for Cable Television Pole Attachments and to Establish a Pole Attachment Rental Rate for Competitive Local Exchange Companies*, Order Directing Utilities to Cancel Tariffs, Cases 01-E-0026, *et al.*, at 4 (NY PSC Jan. 15, 2002).

<sup>31</sup> *See Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*, R. 95-04-043, I. 95-04-044, Decision 98-10-058 (Cal. PUC. Oct. 22, 1998).

<sup>32</sup> *See* Petition of the United Illuminating Company For A Declaratory Ruling Regarding Availability of Cable Tariff Rate For Pole Attachments By Cable Systems Providing Telecommunications Services and Internet Access, Docket No. 05-06-01, Decision, 2005 Conn. PUC LEXIS 295, at \*11-12 (Dec. 14, 2005). *See also* Consideration of Rules Governing Joint Use of Utility Facilities and Amending Joint-Use Regulations Adopted Under 3 AAC 52.900 – 3 AAC 52.940, Order Adopting Regulations, 2002 Alas. PUC LEXIS 489, at \*6 (Oct. 2, 2002) ("The CATV formula is reasonable and should be the default formula for calculating pole attachment rates if the pole owner and the attachers cannot negotiate their own agreement. We find that the formula provides the right balance given the significant power and control of the pole owner over its facilities."); *see also* *Cablevision of Boston Co. v. Boston Edison Co.*, Docket D.P.U./D.T.E. 97-82 (1998) (cable rate assures payment by cable operators of "the fully allocated costs for the pole space occupied by them"); *Detroit Edison Co. v. Michigan Public Serv. Comm'n*, 1998 Mich. App. LEXIS 832, at \*6-7 (Nov. 24, 1998), *aff'g* *Consumers Power Co., Detroit Edison Co.*, Setting Just and Reasonable Rates for Pole Attachments to Utility Poles, Ducts and Conduits, Case Nos. U-010741, U-010816, U-010831, Opinion and Order, 1997 Mich. PSC LEXIS 26 (Feb. 11, 1997).

compensate utilities and avoid creating barriers for new and existing technologies.<sup>33</sup> And, the Regulatory Commission of Alaska issued pole regulations adopting the FCC cable formula for both cable and telecommunications attachments, concluding that “the CATV formula . . . provides the right balance given the significant power and control of the pole owner over its facilities;” and “that changing the formula to increase the revenues to the pole owner may inadvertently increase overall costs to consumers.”<sup>34</sup>

54. The National Association of State Utility Consumer Advocates (“NASUCA”), which, like the Commission, has a legal obligation to represent the interests of both cable and electric utility consumers endorsed the FCC’s Cable Rate, finding “this is the rate that should be used for all pole attachments, regardless of the exact service provided over the attachment, and regardless of the identity of the attacher. . . . Equally importantly, the Commission must not increase the rate paid by broadband service providers because this would be contrary to ‘the nation’s commitment to achieving universal broadband deployment and adoption.’”<sup>35</sup>

55. Similarly, the National Association of Rural Utility Commissioners sponsored a pole attachment study strongly supporting the Cable Rate Formula, stating, “[w]e also recommend that a single formula be determined and that the ‘telecommunications surcharge’ currently in the FCC rules be eliminated.”<sup>36</sup>

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<sup>33</sup> See Comments of Public Utility Commission of Oregon in Docket 07-245, at 1 and attached PUC Order at 9-10, filed Mar. 7, 2008; Comments of Utah Public Service Commission in Docket 07-245, at 1, filed Mar. 7, 2008.

<sup>34</sup> *In the Matter of the Consideration of Rules Governing Joint Use of Utility Facilities and Amending Joint Use Regulations Adopted Under 3 AAC 52.900 – 3 AAC 52.940*, Order Adopting Regulations, at 3-5 (Alaska PSC, Oct. 2, 2002).

<sup>35</sup> Reply Comments of National Association of State Utility Consumer Advocates (“NASUCA”) in FCC Docket 07-245, filed Apr. 22, 2008, at 1-2, 5. NASUCA is a national association of consumer advocates in more than 40 states and the District of Columbia who are “designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.” *Id.* at 1 n.3.

<sup>36</sup> NARUC Ad Hoc Committee Report at 5, *available at* [www.naruc.org/publications/poleattachment\\_summer01.pdf](http://www.naruc.org/publications/poleattachment_summer01.pdf). The study was presented during the NARUC July 2001 Summer Meeting in Seattle, Washington with a disclaimer: that the opinions asserted in the study were those

**e. The Commission's Recent Decision Classifying VoIP as Telecom is Not Inconsistent with Adoption of the FCC Cable Rate Formula**

56. Although this Commission decided in August 2011 to classify VoIP as a telecommunications service under state law for certain limited regulatory purposes, it clearly stated its intent that such classification “would entail minimal regulatory oversight” and would “have minimal, if any, competitive impact on Comcast or Time Warner services in New Hampshire.”<sup>37</sup> Indeed, the Commission in its VoIP Order found that “[s]uch limited regulation is consistent with New Hampshire State Constitution provisions for free and fair competition,” which the Constitution states “should be protected against all monopolies.”<sup>38</sup>

57. In direct contravention of this stated intent, allowing utilities to impose a telecommunications surcharge for competitive voice services would negatively impact TWC's competitive services in New Hampshire. If the FCC's Historic Telecom Rate were adopted, cable pole rents would more than double throughout the state. And, in contravention of the exact constitutional provision the Commission sought to uphold, a telecom surcharge would encourage utilities to leverage their monopoly control over what has been determined to be an essential facility for cable deployment.<sup>39</sup>

58. In upholding the FCC's decision to apply the Cable Rate Formula to comingled cable and broadband services the United States Supreme Court observed: “[s]ince the inception of cable television, cable companies have sought the means to run a wire into the home of each subscriber. They have found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles. Utilities, in turn, have found it convenient to charge

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of the Ad Hoc Committee that prepared the report in response to a resolution by the NARUC Board of Directors and did not represent the beliefs of any individual Commission or NARUC generally.

<sup>37</sup> August 11 PUC Order at 59.

<sup>38</sup> *Id.* (citing N.H. Const., pt. 2, art. 83).

<sup>39</sup> *See Alabama Power*, 311 F.3d at 1362 (“As the owner of these ‘essential’ facilities, the power companies had superior bargaining power, which spurred Congress to intervene in 1978.”).

monopoly rents.”<sup>40</sup> The Court went on to conclude that failing to uphold application of the Cable Rate Formula “would defeat Congress’ general instruction to the FCC to ‘encourage the deployment’ of broadband Internet capability and, if necessary, ‘to accelerate deployment of such capability by removing barriers to infrastructure investment.”<sup>41</sup>

59. It is important to note that the New Hampshire Legislature may alter this Commission’s regulatory treatment of VoIP services this year. The Senate has passed SB 48, which would remove VoIP services generally from the Commission’s regulatory oversight while preserving the Commission’s duty to regulate pole attachments to assure just and reasonable rates.<sup>42</sup> The bill is now pending in the House Committee on Science, Technology, and Energy.

60. Even if the Commission were to determine that its state law classification of VoIP service as a telecommunications service compels adoption of a bifurcated rate structure in New Hampshire, the impact of the Commission’s VoIP Order on this dispute is necessarily limited to PSNH’s billings the Order’s effective date of September 25, 2011 (45 days after the date of the Order). Accordingly, given the requirement in PUC 1303.06(a)(2) that pole owners provide sixty days advance notice of rate increases and the ordinary biannual billing cycle, the earliest this rate structure would have applied would have been to the January 1, 2012 – June 30, 2012 billing period.

## ***2. Impact on Competitive Alternatives***

61. Consideration of the second factor in the Commission’s rate review standards weighs in favor of elimination of a telecommunications surcharge for cable operators. As set forth above, New Hampshire’s incumbent phone providers own a large number of the State’s

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<sup>40</sup> *Gulf Power*, 534 U.S. at 330.

<sup>41</sup> *Id.* at 339 (quoting 47 U.S.C. § 1302(a) and (b)).

<sup>42</sup> S.B. 48, 2011 Session (N.H. 2012) (passed by Senate, Jan. 18, 2012), *available at* <http://www.gencourt.state.nh.us/legislation/2012/SB0048.pdf>.

poles. For example, FairPoint is a joint owner on more than 97 percent of the PSNH poles to which TWC is attached. Laine Aff. at ¶ 8 and Ex. 2 (2012 Invoice, showing 21,565 Joint TV/Internet attachments and 16,712 Joint Communications attachments and 595 Sole TV/Internet attachments and 560 Sole Communications attachments.)

62. As a pole owner, FairPoint is not similarly situated to attaching entities like TWC that depend upon poles and conduit owned by others for distribution of their plant throughout the State. The Commission's rules recognize this distinction in providing rate protection to cable operators (and CLECs) in one section of the rules (PUC 1304.06(a)), and for all other attachers (PUC 1304.06(b)) in another. Likewise, federal law governing pole attachments evolved to establish parity between pole owning incumbent phone companies, deemed to control an essential facility, and cable operators seen as competitors.<sup>43</sup>

63. As set forth above, TWC does not offer competitive VoIP service throughout its New Hampshire service territory. Moreover, TWC's decisions to deploy broadband and offer advanced broadband services such as VoIP are impacted by the cost of deployment, including pole rents. Laine Aff. ¶ 26.

64. Moreover, TWC is not advocating for a better rate than its similarly situated competitors would receive.

65. Further, other attachers, including ILECs, are free to request a ruling from this Commission concerning the rates they pay when they attach to poles owned by other entities.

66. A uniform low pole attachment rate for all services offered by cable operators and CLECs would reduce disparity among service providers.

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<sup>43</sup> *FCC v. Florida Power Corp.*, 480 U.S. at 253 (recognizing that Congress enacted the 1978 Pole Attachment Act "as a solution to a perceived danger of anticompetitive practices by utilities in connection with cable television service.")

### 3. Potential Impact on the Pole Owner and its Customers

67. Adoption of the FCC's Cable Rate Formula would not negatively impact PSNH or its customers.

68. As set forth above, courts have upheld the FCC Cable Rate Formula as compensatory. Indeed, the FCC, in its April 2011 Order, concluded that the Revised Telecom Rate Formula and the FCC Cable Rate Formula are compensatory to utilities "because these rates meet or exceed incremental cost, and satisfy all constitutional compensation requirements."<sup>44</sup>

69. Under the Federal Pole Act, a cable attachment rate is considered "just and reasonable" if it allows the utility to recover at least its incremental costs but no more than the fully allocated costs of the attachment.<sup>45</sup> The FCC Cable Rate Formula produces rates on the *high end* of this statutory range – attributing fully allocated costs to cable attachers.<sup>46</sup>

70. Under the Federal Pole Act, these fully allocated costs are identified as a percentage of the operating expenses and capital costs incurred by a pole owner in owning and maintaining poles. The specific percentage of these costs paid under the FCC Cable Rate Formula is based on the ratio of space used by the attacher to the amount of "usable space" on the poles.<sup>47</sup> This use ratio (typically 7.41 percent) is applied to calculate the share of costs of the *entire* pole to be paid by the attacher for each pole it occupies.<sup>48</sup>

<sup>44</sup> April 2011 FCC Order ¶ 183.

<sup>45</sup> 47 U.S.C. § 224(d)(1).

<sup>46</sup> See *FCC v. Florida Power Corp.*, 480 U.S. 245, 253 (1987); S. Rep. No. 95-580 (1977), at 2, reprinted in 1978 U.S.C.C.A.N. 109, 110.

<sup>47</sup> It is presumed for efficiency's sake that a cable attacher occupies one foot of space on the pole. It is also presumed that there is normally 13.5 feet of "usable space" on a pole. 47 C.F.R. § 1.1418. Consequently, a typical cable attacher pays 7.41 percent (1 ÷ 13.5) of the annual costs of maintaining and owning the entire pole (including usable and unusable pole space costs).

<sup>48</sup> *Id.* It is critical to understand that under the Cable Rate Formula the attacher pays an appropriate share of the costs of the *entire* pole – *usable and unusable* pole space – for each pole it occupies. A common misunderstanding, and one often repeated by pole owners, is that the attacher is only paying a share of the costs of the *usable* space on the pole (*i.e.*, the 13.5 feet of usable space that is normally presumed on a typical pole). However, this fallacy has been recognized and firmly repudiated: "[Such misstatements are] a complete mischaracterization of the Pole Attachment Act and the Commission's rules." *Alabama Cable Telecomms. Ass'n v. Alabama Power Co.*, 16 FCC Rcd 12209,

71. Significantly, the annual rent paid to pole owners under the FCC Cable Rate Formula is *in addition to* “make-ready” costs that the attacher pays to the pole owner that would not be incurred by the pole owner “but for” the pole attachment.<sup>49</sup> Make-ready costs include such items as pre-construction survey of poles by the pole owner, engineering, and pole change-outs required to accommodate an attachment.<sup>50</sup> Thus, under the Cable Rate Formula, the attacher pays make-ready charges to utilities covering all marginal costs needed to rearrange or build poles tall enough for the attacher. The attacher then pays annual rent on top of make-ready amounts to the pole owner based on fully allocated costs for the *entire* pole – *usable as well as unusable space*. Thus, consistent with federal and state goals, the FCC Cable Rate Formula at once permits utilities to recover their costs while promoting broadband deployment and competition.

72. The impact of the rate differential on PSNH annual operating revenue would be insignificant and highly unlikely to impact utility rate payers. Indeed, PSNH has reported annual operating revenues in New Hampshire exceeding \$1 billion annually for the last three years.<sup>51</sup> Moreover, TWC’s payment for services at the TV & Internet rate during the entire period for which a dispute has existed between the parties has not had any demonstrated impact on utility rate customers or PSNH’s pole investment. In fact, PSNH’s reported pole investment increased more than ten percent from year end 2006 to year end 2010. *See* Attachment E (FERC Form 1, 2006 year end data p. 207 line 64 showing \$189,179,694 and FERC Form 1, year end 2010 data p. 207 line 64 showing \$208,842,716).

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¶ 60 (2001) (emphasis added). In 2001, the FCC observed that, “under the Cable Formula, the costs of unusable space are allocated based on the portion of usable space an attachment occupies, the space factor.” *Amendment of Commission’s Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, ¶ 53 (2001).

<sup>49</sup> April 11 FCC Order at ¶¶ 185-187.

<sup>50</sup> *See, e.g., Adoption of Rules for the Regulation of Cable Television Pole Attachments*, Memorandum Opinion and Second Report and Order, 72 F.C.C.2d 59, ¶¶ 8-9, 29-31 (1979) (defining make-ready costs).

<sup>51</sup> *See* [http://www.nu.com/investors/reports/Financial\\_Reports.asp](http://www.nu.com/investors/reports/Financial_Reports.asp) (downloaded on 3/30/12).

#### 4. *Potential Impact on the Deployment of Broadband Services*

73. This Commission recently reported to the FCC that it “frequently hears from residents who cannot get landline broadband service – either DSL or cable Internet – at their locations” and commended the FCC on its “efforts to implement reforms to make high-speed broadband availability a reality for all of America at just and reasonable rates.”<sup>52</sup>

74. In 2008, the New Hampshire Department of Resources and Economic Development & the Telecommunications Advisory Board recognized the critical necessity of improving access to poles to further the state’s broadband deployment objectives.<sup>53</sup>

75. A key state objective for the next few years is to improve access to affordable broadband connectivity in all regions of the state. Recent broadband maps show that broadband is available in some form across the entire state,<sup>54</sup> but deeper analysis by broadband type and speed reveals that much work still remains to achieve full connectivity in many rural areas.<sup>55</sup>

76. Neighboring states have been ranked higher than New Hampshire for broadband deployment. “Massachusetts ... has been active on broadband initiatives” and is “ranked higher

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<sup>52</sup>*In re Connect America Fund; A Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; Comments of the New Hampshire Public Utilities Commission, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109 (Aug. 24, 2011).

<sup>53</sup> State of New Hampshire Broadband Action Plan (June 30, 2008) at iv (“Improve utility pole access” is listed as one of seven “critical” action items “to move the State forward to ensure that New Hampshire maintains and expands its leadership position” on broadband deployment).

<sup>54</sup> See Broadband Service Availability Map, NH BROADBAND MAPPING & PLANNING PROGRAM (last visited Mar. 13, 2012), [http://iwantbroadbandnh.com/maps/Sept2011/Sept2011\\_AccessAll.pdf](http://iwantbroadbandnh.com/maps/Sept2011/Sept2011_AccessAll.pdf) (showing broadband in all areas of New Hampshire as of Sept. 30, 2011, but noting that “[a] census block is mapped as ‘served’ if service is delivered to any part of the block”).

<sup>55</sup> See, e.g., Transfer Technology with Maximum Advertised Download Speed Map, NH BROADBAND MAPPING & PLANNING PROGRAM (last visited Mar. 13, 2012), [http://iwantbroadbandnh.com/maps/Sept2011/Sept2011\\_TechWithFastestDownloadSpeed.pdf](http://iwantbroadbandnh.com/maps/Sept2011/Sept2011_TechWithFastestDownloadSpeed.pdf) (showing regional disparities in terms of broadband access type and maximum speeds thereof); Maximum Advertised Download Speed Greater Than or Equal to 6 mbps Map, NH BROADBAND MAPPING & PLANNING PROGRAM (last visited Mar. 13, 2012), [http://iwantbroadbandnh.com/maps/Sept2011/Sept2011\\_MaxDownloadSpeed6plus.pdf](http://iwantbroadbandnh.com/maps/Sept2011/Sept2011_MaxDownloadSpeed6plus.pdf) (showing broad swaths of New Hampshire that lack broadband connectivity of 6 Mbps or greater).

on many of the economic and broadband rankings when compared to New Hampshire.”<sup>56</sup>

“Connecticut’s level of broadband deployment is among the best in the United States.”<sup>57</sup>

77. As set forth in the State’s Broadband Action Plan, “[a]ttachment fees for pole access should be *consistent and competitive* so that they do not hinder the further deployment of broadband services.”<sup>58</sup>

78. As found by the FCC based upon an extensive record developed in the federal pole proceeding, “pole rental rates play a significant role in the deployment and availability of voice, video and data networks.”<sup>59</sup> A lower and more uniform rate pole attachment rate serves to “eliminate barriers to broadband deployment, provide regulatory certainty, promote deployment and competition, spur investment and reduce significant indirect costs cause by the existing differences between the rates paid by competitors.”<sup>60</sup>

##### 5. *Formulae adopted by the FCC in 2007*

79. Consideration of the fifth factor – the formulae adopted by the FCC in 47 C.F.R. § 1.1409(c) through (f) in effect on July 16, 2007 – does not require adoption of the FCC’s Historic Telecom Rate Formula.

80. First, all that the Commission rules require is that both of the FCC’s formulas in place in 2007 be considered along with the standard’s other factors. As set forth above, the Commission’s authorizing legislation, RSA 374:34-a, allows the Commission to adopt a single rate formula.

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<sup>56</sup> State of New Hampshire Broadband Action Plan at 17-18.

<sup>57</sup> Connecticut Academy of Science and Energy Report for the Connecticut General Assembly Commerce Committee and Energy and Technology Committee, “Advanced Communications Technologies” (Dec. 2006) at vi.

<sup>58</sup> *Id.* at 39 (emphasis supplied). The Report identifies “the need for ‘make ready’ terms and consistency in the attachment fees that broadband providers incur to have access to utility poles when deploying infrastructure.”

<sup>59</sup> April 11 FCC Order ¶ 172.

<sup>60</sup> *Id.*

81. Second, given the events that have transpired since the adoption of the Commission's rules in 2009, in particular, the FCC's decision to abandon a bifurcated rate structure, the FCC's rules in place five years ago should have little, if any, influence over this Commission's decision to adopt pole attachment rates.

82. Indeed, if this Commission were to decide, contrary to the overwhelming conviction of other regulatory bodies and public interest groups, that adoption of a bifurcated rate structure was appropriate, then, at the very least, it should adopt the FCC's Revised Telecom Rate Formula. While this formula does not fully address the problems associated with the superseded formula (because it still requires the parties to agree upon the appropriate number of attaching entities over which costs are to be allocated), it does at least produce rates that are more in line with this Commission's objective to promote ubiquitous broadband in New Hampshire.

83. As described by the FCC, the Revised FCC Telecom Formula, like the FCC Cable Rate Formula, is "readily administrable, consistent with Congress' instruction to develop a regulatory framework that may be applied in a 'simple and expeditious' manner with a 'minimum of staff, paperwork and procedures consistent with fair and efficient regulation.'"<sup>61</sup>

#### ***6. Other interests of subscribers and users***

84. In addition to all of the factors set forth above, the FCC Cable Rate Formula is easy to administer and relies primarily upon publicly available utility cost information. In the case of PSNH, the data is available from the FERC Form 1 filing. Where pole rate calculations can be easily performed by the attaching parties, the need for regulatory intervention is minimized. The ability of the parties to rely on such public information and the agency and judicial precedent that has accumulated over the years regarding various issues that have arisen is invaluable in providing substantial guidance to pole owners and attaching parties alike without the need to

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<sup>61</sup> April 11 FCC Order ¶ 172.

resort to expensive and time-consuming administrative challenges. Pole regimes based on the FCC Cable Rate Formula provide a fair and efficient mechanism for parties to resolve the vast majority of issues informally among themselves.

85. In contrast, the potential for disputes is more likely using either the FCC's Historic Telecom Formula or the FCC Revised Telecom Formula. Disputes mainly concern the rural or urban nature of the service territory and the total number of attaching entities over which certain costs are to be allocated. In contrast, the FCC Cable Rate Formula does not vary depending upon the nature of the service territory or number of attaching entities.

**B. Even under a Bifurcated Rate Structure, Such as Was in Effect in New Hampshire until December 2009, TWC's VoIP Service Attachments May Not Be Assessed at Rates Using a Telecom Rate Formula**

86. Until Commission's rate review standards were adopted in December 2009, New Hampshire pole attachment rates were limited by the FCC pole attachment rent formulas. Throughout the period the FCC pole attachment rent formulas were effective, VoIP attachments were appropriately priced using the FCC's Cable Rate Formula.

87. The FCC has never applied the FCC's telecom rate formulas to VoIP attachments despite requests by pole owning utilities to the FCC to do so.<sup>62</sup>

88. To the extent the FCC has addressed pole attachment rates applicable to comingled cable and broadband service, it concluded that such attachments should be priced using the FCC Cable Rate Formula.<sup>63</sup>

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<sup>62</sup> See April 11 FCC Order ¶ 154 n.464; *Pleading Cycle Established For Comments On Petition For Declaratory Ruling of American Electric Power Service Corporation, et al. Regarding the Rate For Cable System Pole Attachments Used To Provide Voice Over Internet Protocol Services*, Public Notice, WC Docket No. 09-154, DA 09-1879 (2009).

<sup>63</sup> See *Implementation of Section 703(e) of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 6777, ¶¶ 99-102 (1998), *aff'd*, *NCTA v. Gulf Power*, 534 U.S. 327 (2002).

89. The FCC has never classified VoIP as telecommunications service.<sup>64</sup> Indeed, the FCC has expressly declined to address the statutory classification of VoIP services, except in two limited circumstances. Specifically, the FCC ruled that VoIP services involving “net protocol conversion” are information, *not* telecommunications services,<sup>65</sup> but that certain “IP-in-the-middle” services were telecommunications services.<sup>66</sup>

90. In its April 7, 2011 Order modifying the FCC’s Historic Telecom Rate Formula, the FCC confirmed that it has not yet classified interconnected VoIP for pole attachment rate purposes, and that the April 2011 Order did not “disturb prior Commission decisions addressing particular scenarios” such as the rate that applies to comingled video and broadband service.<sup>67</sup>

91. As such, under the FCC formulas that governed at all times prior to adoption of the Commission’s pole rate review standards, VoIP was an information service for purposes of determining the appropriate pole attachment rental, which would have been established using the FCC Cable Rate Formula.<sup>68</sup>

92. For these reasons, TWC already has paid the maximum lawful amounts to PSNH for pole attachments, based on the FCC Cable Rate Formula. PSNH’s attempt to extract retroactive and prospective rents from TWC, based on the FCC Historic Telecom Rate Formula, is, therefore, unjust and unreasonable.

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<sup>64</sup> Although the FCC has imposed a number of substantive obligations on interconnected VoIP providers, it has been careful to avoid any regulatory classification of those services. *See, e.g., IP-Enabled Services*, Report and Order, 24 FCC Rcd 6039 ¶ 15 n.9 (2009); *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 ¶ 59 n.188 (2007); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 ¶ 49 n.166 (2006).

<sup>65</sup> *Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, 19 FCC Rcd 3307, ¶ 2, n.3 (rel. Feb. 19, 2004).

<sup>66</sup> *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457 (rel. Apr. 21, 2004).

<sup>67</sup> April 11 FCC Order ¶ 154 & n.464. *See also* Br. for Respondent at 12, *American Elec. Power Serv. Corp. v. FCC*, No. 11-1146 (D.C. Cir. filed Feb. 17, 2012) (“Even before the 1996 Act, the Commission, with this Court’s approval, had held that cable operators that offer broadband services along with cable service do not lose the protection of the regulated cable rate.”).

<sup>68</sup> *NCTA v. Brand X Internet Servs.*, 545 U.S. 967, 999 (2005); *Gulf Power*, 534 U.S. at 338-39.

**C. If The FCC's Historic Telecom Formula or Revised Telecom Formula Are Adopted, A Proceeding Is Necessary to Determine the Appropriate Rate**

93. In the event a telecom rate would apply to any of TWC's attachments, TWC requests that the Commission ensure PSNH's telecom rates are calculated and assessed in accordance with the Commission's rules.

94. The FCC's Historic and Revised Telecom Formulas include variables that are or may be in dispute, including the appropriate nature of the entire PSNH service territory where TWC is attached (rural or urban) and the appropriate number of total attaching entities over which certain of the pole costs are to be allocated.

95. In addition, under both FCC telecom formulas, presumptions exist that may be rebutted, including the pole height and the amount of the pole owner's investment in appurtenances (i.e., cross arms).

96. Accordingly, a proceeding would be necessary to determine the correct rates using either the FCC's Historic Telecom Rate Formula or Revised Telecom Rate Formula.

97. In contrast, if the Commission determines that the FCC's Cable Rate Formula applies, then the current rate applicable to TV& Internet services (upon information belief, the FCC Cable Rate Formula) would apply to PSNH attachments in New Hampshire.

**V. FURTHER EFFORTS AT INFORMAL RESOLUTION WOULD BE FRUITLESS**

98. In 2006, PSNH unilaterally declared that TWC was providing telecommunications services and began billing TWC at a rate that included an impressive telecom surcharge. In response, TWC notified PSNH that "TWC's residential Digital Phone service is a VoIP-based service that has not been classified as a telecommunications service by the Federal Communications Commission" and sent PSNH a check for pole attachment rent, based on the cable rate. *See Laine Aff.* at ¶ 14 and Ex. 2.

99. For all succeeding pole attachment invoice periods, PSNH sought to collect a telecom surcharge for certain TWC attachments and TWC continued to pay for all attachments at the rate invoiced for TV & Internet Service, as was appropriate under governing FCC formulas and New Hampshire pole attachment rules.

100. TWC notified PSNH again in 2008 and 2011 that VoIP attachments were not subject to the telecom surcharge. Laine Aff. at ¶ 17 and Ex. 4.

101. In November 2011, PSNH again asserted that “because Time Warner’s attachments are for the purpose of providing telecommunications service, Time Warner is responsible for payment of the rate applicable to attachments used for the provision of telecommunications services.” Laine Aff. ¶ 22 and Ex. 3.

102. PSNH filed its Court Complaint on February 1, 2012 without any notice or warning to TWC. Laine Aff. ¶ 25; Attachment C.

103. Unfortunately, the parties remain far apart on the matter in dispute and TWC believes that further attempts to resolve this matter without the Commission’s involvement would be fruitless. Laine Aff. ¶ 27. Immediate resort to this Commission’s processes, and grant of the relief requested, are necessary to ensure that TWC’s right to just and reasonable pole attachment rates, terms and conditions are protected.

## **VI. RELIEF REQUESTED**

For these reasons, TWC respectfully requests the Commission to:

- Assert its jurisdiction over all matters raised in this Petition;
- Find that, pursuant to PUC 1304.06, the FCC’s Cable Rate Formula applies to all attachments to PSNH poles by cable operators, regardless of the communications services provided over such attachments, and has since December 12, 2009;
- Alternatively, find that, pursuant to PUC 1304.06, the FCC’s Cable Rate Formula applies to comingled cable, Internet and VoIP attachments to PSNH poles, and has since December 12, 2009;

- Find that, pursuant to PUC 9073, INTERIM, adopting the FCC pole attachment rate formulas, the FCC's Cable Rate Formula applied to comingled cable, Internet and VoIP attachments from January 17, 2008 to December 11, 2009;
- Order PSNH to cease and desist its unlawful, unjust and unreasonable rates, terms and conditions of attachment in a manner consistent with this Complaint;
- Order PSNH to cease and desist from employing such unreasonable rates, terms and conditions of attachment in the future; and
- Award such other relief the Commission deems just, reasonable and proper.

Respectfully submitted,

**TIME WARNER ENTERTAINMENT L.P.**  
**d/b/a TIME WARNER CABLE**

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March 30, 2012

**ATTACHMENT A**

**STATE OF NEW HAMPSHIRE**  
**Before the**  
**PUBLIC UTILITIES COMMISSION**

<p>TIME WARNER ENTERTAINMENT COMPANY, L.P.</p> <p style="text-align: center;"><i>Petitioner,</i></p> <p>v.</p> <p>PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE</p> <p style="text-align: center;"><i>Respondent.</i></p>
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Docket No. DT 12-\_\_\_

**AFFIDAVIT OF JULIE PATTERSON LAINE**

I, Julie Patterson Laine, hereby depose and say as follows:

1. I am currently Group Vice President, Regulatory at Time Warner Cable Inc. (“TWC”). Time Warner Entertainment Company, L.P. is a wholly owned subsidiary of TWC. My business address is 60 Columbus Circle, New York, New York 10023.

2. I am responsible for legal and regulatory matters relating to TWC’s video, voice and data services. Prior to becoming Group Vice President, Regulatory, I was Vice President & Chief Counsel, Telephony for TWC. I have worked for TWC in these roles for ten years.

3. I make the statement in this Affidavit based on my own personal knowledge or on information and belief, and where based on information and belief, I believe the statements to be true and accurate.

4. TWC is a cable television operator that provides various communications services over its cable systems to subscribers in New Hampshire and elsewhere, including traditional

cable television service, broadband Internet access service and related state-of-the-art services such as high-definition video and video-on-demand. Time Warner Entertainment Company, L.P. is a limited partnership with its principle place of business at 60 Columbus Circle, New York, New York 10023.

5. In the last five years alone, TWC has invested approximately \$12 million to maintain, expand and upgrade our cable system facilities within New Hampshire so we can deliver increased video, broadband Internet access, voice and other advanced services to an ever-growing percentage of our customers. In New Hampshire, TWC's facilities pass 83,000 homes, and TWC provides services to approximately 60,000 subscribers in the state.

6. TWC began to provide interconnected Voice over Internet Protocol ("VoIP") service in parts of the State at the end of 2005. Although TWC has continued to expand the areas in which it provides VoIP service, it does not yet offer the service everywhere it provides video and Internet access services.

7. At no time has TWC provided circuit switched telephone services in New Hampshire.

8. TWC's communications facilities are connected to poles owned by Public Service Company of New Hampshire ("PSNH") in certain locations within the State of New Hampshire. Certain poles to which TWC is attached are solely owned by PSNH and others are jointly owned with FairPoint Communications, Inc. ("FairPoint") (previously Verizon New England, Inc.). According to PSNH invoices, more than 97 percent of the PSNH poles to which TWC is attached are jointly owned with FairPoint.

9. TWC and PSNH are parties to three three-party pole attachment agreements: (1) Pole Attachment Agreement dated February 6, 2004 between Verizon New England, Inc. and PSNH and Time Warner Entertainment Co., L.P. ("Pole Attachment Agreement 1"); (2) Aerial License

Agreement dated October 27, 1998 between New England Telephone and Telegraph Company d/b/a Bell Atlantic-New England and Public Service Company of New Hampshire and Contoocook Valley Telephone Company, Inc. and State Cable TV Corporation (“Pole Attachment Agreement 2”); and (3) Aerial License Agreement dated August 17, 1993 between New England Telephone and Telegraph Company and Public Service Company of New Hampshire and Grassroots Cable Systems, Inc. (“Pole Attachment Agreement 3”). *See* Exhibit 1.

10. TWC pays PSNH annual recurring pole attachment rent for the use of PSNH’s poles pursuant to the Pole Attachment Agreements. Article III of each Agreement pertains to fees and charges and includes required procedures for changes in fees and charges. Appendix I of each agreement sets forth the pole fees and charges.

11. Pole Attachment Agreement 1 includes an Appendix I setting forth PSNH’s annual attachment fees of \$4.10 per jointly owned and jointly used PSNH pole, and \$8.20 per solely owned PSNH pole. Pole Attachment Agreement 2 includes an Appendix I setting forth PSNH’s annual attachment fees of \$3.42 per jointly owned and jointly used PSNH pole, and \$6.84 per solely owned PSNH pole. TWC has been unable to locate its copy of Appendix I to Pole Attachment Agreement 3, the oldest of the three agreements. However, based upon the date of such Agreement, upon information and belief, the attachment fees and charges set forth therein are similar to or less than the fees set forth in Agreement 2, Appendix I.

12. Pole Attachment Agreement 1 provides that PSNH shall provide 60 days advance written notice of any changes in pole attachment fees and charges, and shall provide TWC with an updated Appendix I following the effective date of the new attachment fees and charges. Pole Attachment Agreements 2 and 3 provide that changes to Appendix I (setting forth the fees and charges) shall be effected by the separate execution of Appendix I.

13. At no time has PSNH provided effective notice of pole attachment fees and charges under the Agreements. At no time has PSNH provided a revised Appendix I to any of the Agreements.

14. For each bi-annual billing period beginning January 1, 2006 to June 30, 2006 through January 1, 2012 to June 30, 2012, PSNH has sought to change its pole attachment fees by providing invoices to TWC that included new annual per pole rent charges which were to take effect at the beginning of the next calendar year. In each semiannual invoice from 2006 to 2012, PSNH listed attachment fee amounts for “TV & Internet” and higher attachment fee amounts for “Communications.” *See* Exhibit 2 (sample invoices from PSNH). The listed per pole annual charges also differed depending on whether a pole was “solely-owned” by PSNH, “jointly-owned” with another pole owner (typically the incumbent telephone company, FairPoint Communications), or owned by PSNH and two other pole owners (“tri-owned”). *Id.* The invoices also listed different charges for Communications in Urbanized and Non-Urbanized areas. *Id.*

15. PSNH’s most recent invoice seeks to charge \$10.07 for TV and Internet attachments to PSNH solely owned poles and \$22.96 for Communications attachments to PSNH solely owned poles. *See id.* Rates for jointly owned poles are half these amounts, reflecting, upon information and belief, FairPoint’s 50 percent ownership interest in the poles. *Id.*

16. PSNH’s invoices continued with these apparent FCC attachment classifications in setting rates after this Commission assumed pole attachment jurisdiction in 2008, after this Commission’s pole attachment rules became effective in December 2009, and after the FCC’s adoption of the Revised Telecom Rate Formula. *See* Exhibits 2 and 3 (11/11 letter from PSNH to TWC) hereto.

17. At all times relevant to this Petition, TWC has objected to payment of pole attachment rates based on the PSNH's classification of certain TWC attachments as telecommunications and PSNH's apparent use of the federal pole attachment rate formula governing telecommunications ("Historic Telecom Rate Formula") to calculate those rates. Attached hereto as Exhibit 4 are true and accurate copies of letters that I sent to PSNH contesting PSNH's invoicing of rates that exceeded the maximum rates permitted under the rules of the Federal Communications Commission ("FCC"), and this Commission. The letters dated in 2006 and 2008 were executed and sent to PSNH.

18. Consistent with its notice to PSNH that the FCC's Historic Telecom Rate Formula did not apply, TWC paid the rates charged by PSNH for "TV & Internet," which rates appeared to be calculated using the federal formula applicable to cable and comingled Internet service ("FCC Cable Rate Formula"). TWC has continued to pay for all PSNH attachments at the amount charged for TV & Internet attachments to the present.

19. Among other things, the invoices sought to impose a telecom surcharge in communities where TWC has never offered any type of voice service.

20. TWC has paid PSNH over \$1.2 million in pole attachment fees during the period in dispute, from January 1, 2006 to the present, for all PSNH invoiced attachments at the rate billed by PSNH for TV & Internet.

21. Throughout this period, PSNH continued to assess TWC for alleged underpayments and to impose late payment charges on such alleged underpayments. *See* Exhibit 3.

22. In a letter dated November 18, 2011, PSNH stated its position that "Because Time Warner's attachments are for the purpose of providing telecommunications service, Time Warner

is responsible for payment of the rate applicable to attachments used for the provision of telecommunications services.” *See* Exhibit 3.

23. TWC’s cable television system facilities are currently attached to poles belonging to pole owners in New Hampshire other than PSNH, including FairPoint Communications, Inc., Central Maine Power, National Grid, Contocook Valley Telephone, Littleton Water and Light, and Municipal Electric Department.

24. No pole owner in New Hampshire other than PSNH has sought to impose a bifurcated rate structure for TWC television, Internet and voice services or a surcharge on TWC attachments carrying voice services.

25. On February 1, 2012, PSNH filed a Writ of Summons asserting contract and debt claims against TWC in Merrimack Superior Court, without any notice or warning to TWC (“Court Complaint”). *See* Petition, Attachment C. Based upon correspondence between the parties, TWC has reason to believe that PSNH’s Court Complaint is an illegal attempt to extract unjust and unreasonable pole attachment rates from TWC based upon its provision of VoIP services in certain areas in New Hampshire.

26. Like most companies, TWC evaluates broadband investment opportunities based on the anticipated costs and revenue opportunities they entail. As a result, TWC’s decisions to deploy broadband and offer advanced broadband services such as VoIP are impacted by the cost of deployment, including pole rents.

27. Unfortunately, the parties remain far apart on the matter in dispute and TWC believes that further attempts to resolve this matter without the Commission’s involvement would be fruitless.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED this 30<sup>th</sup> day of March, 2012.

Julie Patterson Laine  
Julie Patterson Laine

STATE OF NEW YORK  
COUNTY OF New York

PATRICIA R. HASTOO  
Notary Public, State of New York  
No. 01HA6023253  
Qualified in New York County  
Commission Expires July 15, 2015

Subscribed and sworn to, before me.

March 30<sup>th</sup> 2012

Patricia R. Hastoo  
Notary Public

Notary Public  
State of New York  
My Commission Expires July 15, 2015

**EXHIBIT 1**

POLE ATTACHMENT AGREEMENT

DATED February 6, 2004

BETWEEN

VERIZON NEW ENGLAND INC. (LICENSOR)

AND

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, (LICENSOR)

AND

TIME WARNER ENTERTAINMENT CO., L.P., (LICENSEE)

1

VERIZON NEW ENGLAND INC.

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POLE ATTACHMENT AGREEMENT

THIS AGREEMENT, made as of this 6th day of February 2004 between VERIZON NEW ENGLAND INC. organized and existing under the laws of the State of New York, having its principal office at 185 Franklin Street, Boston, MA 02110, and PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, organized and existing under the laws of the State of New Hampshire, having its principal office at 60 West Pennacook Street, Manchester, NH 03105 (either or both hereinafter called "Licensor") and TIME WARNER ENTERTAINMENT CO., L.P., organized and existing under the laws of the State of Delaware, having its principal office in Keene, NH (hereinafter called "Licensee").

WITNESSETH

WHEREAS, Licensee for its own use desires to place and maintain cables, equipment, and facilities on poles of Licensor, specifically in the State of New Hampshire; and

WHEREAS, Licensor is willing to permit, to the extent it may lawfully do so, the placement of cables, equipment, and facilities by Licensee on Licensor's poles subject to the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

**ARTICLE I - DEFINITIONS**

- 1.1 Anchor. A facility consisting of an assembly of a rod secured to a fixed object or plate designed to resist the pull of guy strand, or strands.
- 1.2 Anchor Attachment. A guy strand attached to an anchor solely owned or jointly owned by Licensor or for which Licensor is responsible for authorizing attachments.
- 1.3 Attachments. Any of Licensee's facilities in direct contact with or supported by a utility pole, and/or any article of equipment attached to a point on a pole not normally occupied by a strand attachment (e.g., power supplies, equipment, cabinets, terminals, etc.). For billing purposes an

Attachment is counted for each guy strand and cable supported by a through-bolt and for each article of equipment attached to a Utility Pole.

- 1.4 Attachment Fee. A specified amount revised periodically, billed semi-annually or annually to the Licensee.
- 1.5 Guy Strand. A metal cable of high tensile strength which is attached to a pole and anchor or another pole for the purpose of reducing pole stress.
- 1.6 Joint Owner. A person, corporation or other legal entity having an ownership interest in a pole and/or anchor.
- 1.7 Joint User. A party to whom use of the pole or anchor has been extended by the owner of the facility. The term "Joint User" shall not include Licensees.
- 1.8 Licensee's Facilities. The cable and all associated equipment and hardware owned by the Licensee.
- 1.9 Licensee's Maintenance Work. Work performed by Licensee on its facilities and attachments for repair, replacement and daily servicing of its plant, not associated with any significant overlash or rebuild project.
- 1.10 Make-ready Work. All work, including, but not limited to rearrangement and/or transfer of existing facilities, replacement of a pole or any other changes required to accommodate the attachment of licensee's facilities to a pole or anchor.
- 1.11 Overlash – The act of attaching any single strand, hardware, cable, wires and/or apparatus owned by Licensee to same Licensee's existing strand, hardware, cable, wires and/or apparatus.
- 1.12 Periodic Inspection. Licensor's inspection of Licensee's facilities performed to determine that attachments are authorized and are maintained in conformance with the required specifications in Article VI of this Agreement.
- 1.13 Planning Manager's Area. A geographic area assigned to a Verizon New England Engineer representative. The Planning Manager's Areas are set forth in APPENDIX III.
- 1.14 Pre-construction Survey. There are two elements of the Pre-construction Survey: 1.) field inspection of the existing pole and anchor facilities to

determine any necessary Make-ready Work, and 2.) administrative effort required to process the application and to prepare the charges for Make-ready Work, if applicable.

- 1.15 Post-construction Inspection. Inspection performed to measure and/or to visually observe Licensee's Facilities, during or shortly after completion of construction to ensure the attachment and the installation of the Licensee's Facilities conform to the standards required by this Agreement.
- 1.16 Rebuild. Work other than Licensee's Maintenance Work performed by Licensee to replace, add to or alter its existing attachments or facilities attached to Licensor's poles.
- 1.17 Subsequent Inspections. Inspections performed to confirm the correction of non-conforming conditions, which were observed during Periodic or Post-construction Inspections.
- 1.18 Suspension Strand (Messenger). A metal cable of high tensile strength attached to a pole and used to support facilities.
- 1.19 Unit Cost. A dollar amount subject to periodic revision by Licensor, associated with Pre-construction Surveys, Make-ready Work and Inspections applicable to specific work operations and functions.
- 1.20 Utility Pole. A pole solely owned, jointly owned, or jointly used by the Licensor and used to support its facilities and/or the facilities of an authorized Licensee.

## ARTICLE II – SCOPE OF AGREEMENT

- 2.1 Subject to the provisions of this Agreement, Licensor agrees to issue to Licensee for any lawful purpose, revocable, non-exclusive licenses authorizing the attachment of Licensee's Facilities to Licensor's poles. This Agreement governs the fees, charges, terms and conditions under which Licensor issues such licenses to Licensee. Licensee must obtain separate authorization from, and pay all applicable Fees and Charges to, each Licensor and any Joint Owner or Joint User of any Utility Pole. This Agreement is not in and of itself a license, and before making any attachment to any Utility Pole, Licensee must apply for and obtain a license.
- 2.2 This Agreement supersedes all previous aerial agreements between Licensor and Licensee. This Agreement shall govern all existing licenses between Licensee

and Licensor as well as all licenses issued subsequent to execution of this Agreement.

- 2.3 No use, however extended, of Licensor's pole or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in such poles. Licensee's rights herein shall be and remain a license.
- 2.4 Nothing contained in this Agreement shall be construed to require Licensor to construct, retain, extend, place, or maintain any pole or other facilities not needed for Licensor's own service requirements.
- 2.5 Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against Licensor entering into agreements with other parties regarding the poles covered by this Agreement. The rights of the Licensee shall at all times be subject to any existing agreement(s) or arrangement(s) between Licensor and any Joint Owner(s) or Joint User(s) of Licensor's poles.
- 2.6 Nothing contained in this Agreement shall be construed to require Licensor to grant a license where Licensor believes that placement of Licensee's Facilities would interfere with Licensor's existing service requirements, or the use of Licensor's facilities by other parties, or create a hazardous or unsafe condition.

### **ARTICLE III – FEES AND CHARGES**

#### **3.1 General**

- 3.1.1 Licensee agrees to pay to Licensor the applicable Attachment Fees and Charges as specified in and in accordance with the terms and conditions of subpart 3.2 of this Agreement and of APPENDIX I, attached hereto and made a part hereof.
- 3.1.2 The Licensor may change the amount of Attachment Fees and Charges specified in APPENDIX I by giving the Licensee not less than sixty (60) days written notice prior to the date the change is to become effective. Notwithstanding any other provision of this Agreement, Licensee may terminate this Agreement at the end of such sixty (60) day notice period if the change in Fees and Charges is not acceptable to Licensee.

In order to terminate in this circumstance the Licensee must give Licensor written notice of its election to terminate this Agreement at least sixty (60) days prior to the end of such sixty (60) day notice period or for such other period as the parties may agree in writing. Licensee shall thereafter remove its facilities and attachments in accordance with the process set forth in Article X, subpart 10.3 of this Agreement.

- 3.1.3 Changes in the amount of Attachment Fees and Charges specified in APPENDIX I shall become effective on the date specified by Licensor, subject to the sixty (60) day advance written notice. The changes shall be presumed acceptable unless at least thirty (30) days prior to the end of the sixty (60) day notice period Licensee advises Licensor in writing that the changes are unacceptable and, in addition, submits the issue to the regulatory body asserting jurisdiction over this Agreement for decision. Licensee shall pay the existing Attachment Fees and Charges during the time that the issue is being reviewed by said regulatory body, subject to true-up based on the final determination of rates by said regulatory body plus any interest prescribed by said regulatory body.

Licensor shall provide licensee with an updated APPENDIX I following the effective date of the new Attachment Fees and Charges.

3.2 Attachment Fees

- 3.2.1 Licensees shall pay an Attachment Fee for each attachment made to Licensor's Utility Poles. For the purpose of computing the Attachment Fees due hereunder, the Fee shall be based upon the number of attachments for which licenses have been issued.
- 3.2.2 Attachment Fees are calculated from the first day of the month following the date a license is issued. Fees shall be payable semi-annually or annually in advance, unless otherwise provided. Payment is due within the later of thirty (30) days from the first day of January and the first day of July or thirty (30) days from the date the bill is issued.

3.3 Pre-construction Survey, Make-ready Work and Inspection Charges

- 3.3.1 Licensee shall calculate and pay to Licensor the applicable Pre-construction Survey Charge with its License Application. The License Application forms are set forth in APPENDIX IV, attached hereto and made a part hereof. The Pre-construction Survey Charge shall be calculated based on the rates and formulas set forth in APPENDIX I.

- 3.3.2 Except as provided in Appendix VI, Licensee shall make an advance payment of the applicable Charge to Licensor prior to any performance by Licensor of any Pre-construction Survey, Make-ready Work, Post-construction Inspection or Subsequent Inspection. Where the work to be performed by Licensor is covered by a Unit Cost as described in subpart 3.3.4, the Licensor shall use the Unit Cost for the Charge. Where the work to be performed by Licensor is not covered by a Unit Cost, in whole or in part, the Charge will be based on an estimate of charges. For any charges based on an estimate, the Licensee shall be credited for any amount paid in excess of the Licensor's estimated charges, or shall be billed for any amount in addition to Licensor's estimated charges, as compared to the actual charges as finally computed.
- 3.3.3 Licensee shall make payment to the Licensor within thirty (30) days following the invoice for Periodic Inspections according to subpart 3.3.4 of this Agreement.
- 3.3.4 Pre-construction Survey, Make-ready Work, and Inspection (Post-construction Inspection, Periodic Inspection and Subsequent Inspection) Charges are based upon Unit Costs, where available. Unit Costs are set forth in APPENDIX I of this Agreement and are subject to change from time to time; provided however, the Unit Costs shall not change more frequently than once every twelve (12) months. Any changes in Unit Cost shall not vary by more than five percent (5%) per annum from the existing Unit Cost; provided that in the case of a significant and unforeseen change in circumstances affecting Licensor's costs, Licensor may adjust Unit Cost in excess of 5%. Sixty (60) days prior to any change in Unit Cost in excess of 5%, Licensor shall provide to Licensee a written explanation of the significant and unforeseen change in circumstance for the increase. A significant and unforeseen change in circumstances affecting Licensor's costs include changes in tax laws, accounting changes, and regulatory, judicial or legislative changes that affect the Licensor's costs. A statement of current Unit Costs are set forth in APPENDIX I and changes thereto shall be published at the time of such change.

For work where Unit Costs are not available, such as cable splicing, such costs will be billed on an actual time and material basis plus an amount equal to ten percent (10%) of such costs

#### 3.4 Payment Requirements

- 3.4.1 For any bill rendered by Licensor to Licensee hereunder, except where advance payment is required, payment is due within thirty (30) days from

the date of the bill. Late payment of any bill is subject to a late fee of 1.5% per month applied to the outstanding balance from the due date of the bill. Licensor, at its sole discretion, may change this late fee from time to time during the term of this Agreement to reflect prevailing market conditions.

- 3.4.2 Non payment of any amount due hereunder shall constitute a default of this Agreement, and subject this Agreement to termination under the provisions of Article X.
- 3.4.3 For any bill rendered by Licensor to Licensee for advance payment of Pre-construction Survey Charges or Make-ready Work Charges, hereunder, payment shall be made within thirty (30) days of the bill date. If such advance payment is not received within thirty (30) days, Licensor shall have the right to issue a letter of cancellation no sooner than 15 days thereafter, which will cancel the Licensee's application for the license. Thereafter, if Licensee wishes to proceed, Licensee shall submit a new application for a license, as if it had never submitted the initial application.

### 3.5 Billing Disputes

- 3.5.1 Where Licensee in good faith disputes a bill or invoice rendered by Licensor, Licensee shall make payment of all portions of said bill or invoice not in dispute as provided in Article III. Where the cumulative amount of all of Licensee's bills or portions(s) of bills in dispute are in excess of \$10,000.00, Licensee shall deposit said cumulative disputed amounts in an interest-bearing escrow account until such time as the disputes are resolved. The disputed amount deposited together with the proportional interest, shall be distributed immediately to Licensor and/or Licensee in accordance with and upon resolution of the dispute. Where the cumulative amount of all of Licensee's bills or portions of bills in dispute are less than or equal to \$10,000.00, Licensee shall make payment to Licensor and shall be rebated an appropriate amount (including interest computed at the prime rate at a bank mutually agreed to by the parties) based on the resolution of the dispute.
- 3.5.2 Where Licensee fails to pay an amount due and owing under this Agreement (including amounts in dispute that are less than or equal to \$10,000) or fails to establish an escrow account for disputed amounts more than \$10,000, or fails to invoke the dispute-resolution procedures set forth in subpart 15.10 of this Agreement within six months of the establishment of amounts disputed in good faith, in addition to all other remedies available to Licensor including termination under provisions of Article X of this Agreement, Licensor may refuse to perform any Survey, Inspection or Make-ready Work for Licensee and may refuse to issue any

license to Licensee until such time as the amount is paid or is deposited in an escrow account.

#### **ARTICLE IV - APPLICATION FOR AND ISSUANCE OF LICENSES**

- 4.1 Before Licensee makes an Attachment to any pole, Licensee shall make application for and have received a license therefor in the forms attached in APPENDIX IV. Licensor may update these forms from time to time during the term of the Agreement.
- 4.2 Licensee agrees to limit the filing of applications for pole attachment licenses to include not more than 200 poles on any one application. Licensor reserves the right to limit the filing for pole attachments to no more than 2,000 poles on all applications that are pending approval by Licensor at any one time within a single Planning Manager's Area. Licensee further agrees to designate a desired priority of completion of the Pre-construction Survey and Make-ready Work for each application relative to all other of its applications on file with Licensor at the same time.
- 4.3 Properly completed license applications received by Licensor on the same day from two or more licensees for attachment accommodations on the same pole(s), shall be processed together. All Pre-construction Survey or Make-ready Work required to accommodate the applicants will be completed simultaneously for the benefit of all applicants. All applicants will be rebated with the pro rata share of costs based on the number of applicants.

#### **ARTICLE V – PRE-CONSTRUCTION SURVEY and MAKE-READY WORK**

- 5.1 A Pre-construction Survey is required for each pole and anchor for which an attachment is requested to determine the adequacy of the pole and anchor to accommodate Licensee's attachments and facilities. The Pre-construction Survey will be performed jointly by representatives of Licensor, Joint Owner and/or Joint User, and Licensee unless otherwise agreed to by all parties.
- 5.2 Licensor will process all requests for access to poles on a non-discriminatory basis in the order such requests are received.
- 5.3 Within forty-five (45) days of receipt of written notification in the form of a complete license application and the correct Survey Fee payment, Licensor shall perform or have performed a Pre-construction Survey and present the Survey results. The Survey results will contain one of the following statements:

If no Make-ready Work is required, a license shall be issued for the attachment.

If Licensor determines that the pole or anchor to which Licensee desires to make attachments is inadequate or otherwise needs rearrangement of the existing facilities thereon to accommodate the Licensee's Facilities, in accordance with the specifications set forth in Article VI, Licensor will provide Licensee with an itemized invoice for such anticipated Make-ready Work. The Make-ready Work will be performed following receipt by Licensor of advance payment. Upon receipt of the advance payment, Licensor will provide the Licensee with the estimated start and estimated construction completion date of the Make-ready Work.

If Licensor determines that the pole may not reasonably be rearranged or replaced to accommodate Licensee's Facilities for reasons of capacity, safety, reliability or engineering, the Licensor may refuse to grant a license for attachment. Licensor shall provide the specific reason(s) for such denial. Licensor shall not unreasonably exercise the right reserved hereunder.

- 5.4 Licensor shall make every reasonable effort to complete Make-ready Work within six (6) months of receipt of payment for Make-ready Work from Licensee, except for reasons beyond Licensor's control. For applications consisting of six (6) or fewer poles requiring Make-ready Work, and where Verizon is the only party required to perform make-ready work, Verizon will complete the make-ready work within 45 days.
- 5.5 To the extent practicable, Licensor shall provide Licensee, no less than sixty (60) days prior written notice of any modification of poles (such as pole replacement or relocation) other than routine maintenance, or modifications in response to emergencies, or to a request from a governmental authority.

#### **ARTICLE VI - SPECIFICATIONS AND LEGAL REQUIREMENTS**

- 6.1 Licensee's Facilities shall be placed and maintained in accordance with the requirements and specifications of the latest editions of the "Blue Book - Manual of Construction Procedures" (Blue Book), published by Telcordia Technologies Inc.; the "National Electrical Code (NEC), published by the National Fire Protection Association, Inc.; the "National Electrical Safety Code" (NESC), published by the Institute of Electrical and Electronics Engineers, Inc.; and rules and regulations of the U.S. Department of Labor issued pursuant to the "Federal Occupational Safety and Health Act of 1970", as amended, (OSHA) or any governing authority having jurisdiction over the subject matter. Where a difference in specifications may exist, the more stringent shall apply.

- 6.2 Licensee shall be responsible for obtaining from the appropriate public and/or private authority any required authorization to construct, operate and/or maintain Licensee's Facilities on public and private property at the location of Licensor's poles. Licensee shall be responsible for obtaining permission from any joint Owner(s) or Joint User(s) of the pole before making any attachment thereto. This permission shall be in the form of a license or other writing.
- 6.3 No license granted under this Agreement shall extend to any of the Licensor's poles where the placement of Licensee's attachments would result in a forfeiture of the rights of licensor, Joint Owner(s), or Joint User(s) to occupy the property on which such poles are located. If placement of Licensee's attachments would result in a forfeiture of the rights of licensor, Joint Owner(s), or Joint User(s) or both, to occupy such property, Licensee agrees to remove its attachments forthwith; and Licensee agrees to pay Licensor, Joint Owner(s) or Joint User(s), or both all losses, damages and costs incurred as a result thereof.

## **ARTICLE VII - CONSTRUCTION AND MAINTENANCE OF ATTACHMENTS**

### **7.1 General Provisions**

- 7.1.1 Licensee shall, at its own expense, construct and maintain its attachments and facilities on Licensor's poles in a safe condition and in a manner acceptable to Licensor. Licensee shall construct and maintain its attachments and facilities so as not to conflict with the use of Licensor's poles by Licensor or by other authorized users of Licensor's poles, nor electrically interfere with Licensor's facilities attached thereto.
- 7.1.2 Licensor shall specify the point of attachment on each of Licensor's poles to be occupied by licensee's attachment. Where multiple Licensees' attachments are involved, Licensor shall attempt, to the extent practical, to designate the same relative position on each pole for each Licensee's attachments.
- 7.1.3 Licensee shall provide written notice to the Licensor of the actual dates of attachment within thirty (30) days of the date of attachment so that Licensor may promptly schedule a Post-construction Inspection.
- 7.1.4 Licensee may attach its guy strand to Licensor's existing anchor rod at no charge where Licensor determines that adequate capacity is available; provided that Licensee agrees to secure any necessary right-of-way therefor from the appropriate property owner. Should Licensor, Joint Owner(s) or Joint User(s), if any, for its own service requirements, need to

increase its load on the anchor rod to which Licensee's guy is attached, Licensee will either arrange its guy strand on the anchor rod or transfer it to a replacement anchor as determined by Licensor.

- 7.1.5 Should Licensor, Joint Owner(s), Joint User(s), or other Licensee need to attach additional facilities to any of Licensor's poles, to which Licensee is attached, Licensee will either rearrange its attachments on the pole or transfer them to a replacement pole as determined by Licensor so that the additional facilities of Licensor, Joint Owner(s) Joint User(s) or other Licensee may be attached.
- 7.1.6 If Licensee does not rearrange or transfer its attachments within fifteen (15) days after receipt of written notice from Licensor requesting such rearrangement or transfer and indicating that such pole is ready for rearrangement or transfer by Licensee, Licensor, Joint Owner(s) or Joint User(s) may perform or have performed such rearrangement or transfer, and, notwithstanding the provisions of subpart 7.1.7, Licensee agrees to pay the cost thereof.
- 7.1.7 Licensee shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or modification of an existing attachment sought by another party (including the Licensor, Joint Owner(s) or Joint User(s)) and should be paid for any work it performs to accommodate such request. Where multiple parties join in a modification, each party's proportionate share of the total cost will be based on a ratio of the amount of new space occupied by that party to the total amount of new space occupied by all parties joining in the modification. Licensor shall not be required to use revenue that may result from the use of any additional space resulting from such replacement or rearrangement to compensate parties that paid for the modification.
- 7.1.8 Unless otherwise governed by law, all tree trimming made necessary, in the opinion of the Licensor, by reason of the Licensee's proposed attachments at the time of attachment provided the owner(s) of such trees grant permission to the Licensor, shall be performed by contractors approved by and under the direction of Licensor, at the sole expense of the Licensee.
- 7.1.9 Any such tree trimming that may be required on Licensee's customer's premises, to clear Licensee's cable drop, shall be performed by the Licensee at its expense.

- 7.1.10 Tree trimming needed as a result of adverse weather conditions, such as wind, snow or ice storms, shall be performed by Licensor or its approved contractors. Since such tree trimming benefits Licensor, Licensee and other parties that may be lawfully attached to Licensor's poles, Licensee agrees to negotiate in good faith with the Licensor, on a case-by-case basis, to establish an appropriate sharing of costs associated with the tree-trimming projects.
- 7.1.11 For each new facility attached by Licensee to Licensor's poles, on or after the date of execution of this Agreement, Licensee shall place identification tags on cables located on poles and identification apparatus tags on any associated items of Licensee's Facilities. Licensee shall also place these identification tags when engaged in an Overlash or Rebuild project. Overlashed bundles require one tag per bundle, per Licensee. The requirements for identification tags are set forth in the Blue Book.
- 7.1.12 When Licensor deems it an immediate threat to safety and/or an emergency exists, it may rearrange, transfer, or remove Licensee's attachments to Licensor's poles at Licensee's expense. Licensor shall make reasonable efforts to contact Licensee as circumstances permit.

7.2 Licensee's Routine Maintenance, Overlash, Rebuild Work and Placement of Power Supplies

- 7.2.1 Licensee shall work cooperatively with the local Verizon New England Reimbursable Construction Engineer when performing routine Maintenance Work on its facilities and/or attachments. Cooperative practices shall include a system of notification by phone, facsimile, answering system, or otherwise for scheduling purposes. Any work, which involves six or fewer adjacent spans shall be presumed to be routine Maintenance Work. Significant simultaneous maintenance activity within a geographic area may be deemed by Licensor to be Rebuild activity.
- 7.2.2 Licensee shall follow the procedures set forth in APPENDICES V, VI and VII, hereof, in performing Rebuild or Overlash work and placing power supplies.

**ARTICLE VIII - INSPECTION OF LICENSEE'S FACILITIES**

- 8.1 The Licensor reserves the right to make Post-construction, Subsequent, and Periodic Inspections of any part or all of Licensee's facilities attached to Licensor's poles and/or anchors. Licensor shall provide Licensee with a copy of any written report of such inspection within thirty (30) days following the inspection. Charges and billing for Inspections as set forth in Article III shall

apply, provided that Verizon New England commences Post-construction and Subsequent Inspections within 90 days after notification from Licensee that the work is complete.

- 8.2 Except as provided in Appendix VI and VII, Post-construction Inspections shall consist of a 10 percent sample of the poles to which the Licensee has attached facilities after completion of work. If Verizon New England determines that the Licensee is not in compliance at greater than 2 percent of the sampled locations, Verizon New England may inspect and bill Licensee to inspect all poles involved in the project. Within ten (10) days of the completion of a Post-construction Inspection, the Licensor shall notify the Licensee in writing of the date of completion of Post-construction inspection and its findings.
- 8.3 Where Post-construction Inspection by the Licensor has been completed and non-complying conditions have been identified, Licensee shall correct any non-complying conditions within thirty (30) days of the date of the written notice from the Licensor. If after said 30-day period Licensee has not corrected all such non-complying conditions, Licensor may notify Licensee that if all such non-complying conditions are not corrected within an additional 30-day period, no further attachment authorizations shall be issued to Licensee until Licensee's facilities are brought into compliance. If corrections are not made by Licensee within 30 days from the second notification by Licensor, the Licensor may perform or have performed such corrections and Licensee shall pay to the Licensor the cost of performing such work.
- 8.4 Licensor may undertake Subsequent Inspections to determine if appropriate corrective action has been taken by Licensee. If the Subsequent Inspection finds continued non-complying conditions, Licensor may perform or have performed corrective action at the sole expense of the Licensee or Licensor may terminate the license pursuant to Article X.
- 8.5 The making of Post-construction, Subsequent and/or Periodic Inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation, or liability specified in this Agreement.
- 8.6 Licensor reserves the right to make Periodic Inspections of all or any part of the attachments or facilities of Licensee at the expense of Licensee, upon sixty (60) days written notice to the Licensee. Periodic Inspections of the entire plant of the Licensee will not be made more often than once every five years unless, in Licensor's judgment, such inspections are required for reasons involving safety or because of an alleged violation by Licensee of the terms of this Agreement. Licensor shall make a reasonable effort to coordinate its Periodic Inspections with any Joint Owner.

## ARTICLE IX - UNAUTHORIZED ATTACHMENTS

- 9.1 If any of Licensee's facilities are attached to Licensor's poles without being licensed, Licensor, may recover fees as specified in subpart 9.2, without prejudice to its other rights or remedies under this Agreement, including termination, or otherwise, and require Licensee to submit in writing, within thirty (30) days after receipt of written notification from Licensor of the unauthorized attachment, a pole attachment application. If such application is not received within the specified time period, Licensee shall remove its unauthorized attachments within thirty (30) days of the final date for submitting the required application, or Licensor may remove Licensee's attachments or facilities without liability at the Licensee's expense.
- 9.2 Upon discovery of an unauthorized attachment, Licensee agrees to pay an amount equal to five times the current applicable annual Attachment Fee specified in APPENDIX I times the number of unauthorized attachments. The penalty shall be in addition to all other amounts due and owing to Licensor under this Agreement.

## ARTICLE X – TERMINATION

### 10.1 60-Day Termination

In addition to rights of termination provided to the Licensor under other provisions of this Agreement, the Licensor shall have the right to terminate Licensee's license, authorizations and/or rights granted under provisions of this Agreement where:

- (a) the Licensee's Facilities are maintained or used in violation of any law or in aid of an unlawful act or undertaking;
- (b) the Licensee ceases to have authority to construct and operate its facilities on public or private property at the location of the particular pole or anchor covered by the authorization;
- (c) the Licensee fails to comply with any of the terms and conditions of this Agreement or defaults in any of its obligations thereunder;
- (d) the Licensee attaches to a utility pole and/or anchor without having first been issued authorization therefor;
- (e) the Licensee, subject to provisions specified in Article II, ceases to provide its services;

- (f) the Licensee sublets or apports part of the licensed assigned space or otherwise permits its assigned space to be used by an entity or an affiliate not a party to this Agreement.

10.1.1 The Licensor will notify the Licensee in writing of any instances cited in this subpart. The Licensee shall take corrective action as necessary to eliminate the non-compliance and shall confirm in writing to the Licensor within sixty (60) days following such written notice that the non-compliance has ceased or been corrected. If Licensee fails to discontinue or correct non-compliance and fails to give the required written confirmation to the Licensor within the time stated above, the Licensor may terminate the license(s), authorization and/or rights granted hereunder for the poles and/or anchors at which such non-compliance has occurred.

## 10.2 Immediate Termination

Pole attachment license(s), authorization and/or rights are automatically and immediately terminated by the Licensor if:

- (a) except in circumstances in which Licensor has accepted evidence of self-insurance in accordance with Article XIV, the Licensee's insurance carrier shall at any time notify the Licensor that the policy or policies of insurance as required in Article XIV will be or have been cancelled or amended so that those requirements will no longer be satisfied;
- (b) the Licensee shall fail to pay any sum due under Article III or to deposit any sum required under this Agreement, or shall fail to maintain satisfactory surety as required in Article XII;
- (c) any authorization that may be required by any governmental or private authority for the construction, operation and maintenance of the Licensee's facilities on a pole or anchor is denied, revoked or cancelled.

## 10.3 General

10.3.1 In the event of termination of any of the Licensee's licenses, authorization and/or rights hereunder, the Licensee shall remove its facilities from the poles and anchors within sixty (60) days of the effective date of the termination; provided, however, that Licensee shall be liable for and pay all fees and charges pursuant to provisions of this Agreement to the Licensor until Licensee's facilities are actually removed from the utility pole(s) and anchor(s). If the Licensee fails to remove its facilities within

the specified period, the Licensor shall have the right to remove such facilities at the Licensee's expense and without liability on the part of the Licensor for damage or injury to such facilities or interruption of Licensee services.

10.3.2 When Licensee's facilities are removed from a pole or anchor, no attachment to the same pole or anchor shall be made until the Licensee has first complied with all of the provisions of this Agreement as though no such pole or anchor attachment had been made previously and all outstanding charges due to the Licensor for such pole or anchor have been paid in full.

10.3.3 Any license issued under this Agreement shall automatically terminate when Licensee ceases to have authority to construct, operate and/or maintain its attachments on the public or private property at the location of the particular pole covered by the license. Such automatic termination shall be stayed if the Licensee has sought judicial or regulatory review of the decision that: (1) has acted to terminate such authority or (2) has declared that the Licensee lacks such authority.

#### 10.4 Licensee's Removal of Attachments

10.4.1 Licensee may at any time remove its attachments from a pole or anchor after first giving Licensor written notice of such removal. Licensee shall complete and provide to Licensor the Notification of Discontinuance of Use of Poles as contained in APPENDIX IV hereto. Licensor shall verify and execute such form within thirty (30) days of submission. Billing for the attachment shall cease as of the last day of the month in which verification occurs. Licensor may update this form from time to time during the term of this Agreement.

10.4.2 Following such removal, no attachment shall again be made to such pole until Licensee shall have complied first with all of the provisions of this Agreement as though no such attachment had been made previously.

### **ARTICLE XI - ASSIGNMENT OF RIGHTS**

11.1 Licensee shall not assign or transfer this Agreement or any authorization granted hereunder, and this Agreement shall not inure to the benefit of Licensee's affiliates, successors or assigns without the prior written consent of Licensor, which consent shall not be unreasonably withheld; provided, however, no consent of Licensor is required if the Licensee assigns or transfers this Agreement to an affiliate and notifies the Licensor of such assignment or transfer, including any change in the notice address to be provided in accordance with subpart 15.3.

- 11.2 In the event such consent or consents are granted by Licensor, then this Agreement shall extend to and bind the affiliates, successors and assigns of the parties hereto.
- 11.3 Pole space licensed to Licensee hereunder is for the use of the Licensee named in this Agreement only, and Licensee shall not lease, sublicense, share with, convey or resell to any affiliates, subsidiaries, or any others any such space or rights granted hereunder.

#### **ARTICLE XII - SURETY REQUIREMENTS**

- 12.1 Upon request of Licensor, a new Licensee, or an existing Licensee that lacks a history of prompt payments shall furnish bond or other satisfactory evidence of financial security in an amount specified as follows in subpart 12.2 to guarantee the payment of any sums which may become due to the Licensor for Attachment Fees due hereunder and any other charges for work performed for Licensee by the Licensor, including the removal of Licensee's facility upon termination of any authorization issued hereunder.
- 12.2 Licensee shall furnish a bond or other security satisfactory to the Licensor in the following amounts: Security in the amount of \$20.00 shall be required for each authorized pole attachment. The total amount of security required hereunder shall not exceed \$300,000 or be less than \$1,000. Security will not be required where Licensee's total attachment authorizations do not exceed ten (10).
- 12.3 If the financial security is in the form of a bond or irrevocable Letter of Credit, such instrument shall be issued by a surety company or bank satisfactory to the Licensor. The instrument shall contain a provision that the surety company or bank will pay Licensor, within the dollar limits of the instrument, any sum demanded by the Licensor as due under the Agreement, whether or not the Licensee contests its liability to pay such sum, and whether or not the Licensor exercises or has exercised any option it may have to terminate. If any such amounts are paid by the surety company or bank, the Licensee shall restore the surety bond or Letter of Credit to the full amount required under this Article, within thirty (30) days after notice of such payment is sent to the Licensee.
- 12.4 The amount of the bond or the financial security shall not operate as a limitation upon the obligations of the Licensee.

#### **ARTICLE XIII - LIABILITY AND DAMAGES**

- 13.1 Licensor reserves to itself, its successors and assigns, the right to locate and maintain its poles and to operate its facilities in conjunction therewith in such a

manner as will best enable it to fulfill its own service requirements. Licensor shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's communications services arising in any manner, except from Licensor's sole negligence, out of the use of Licensor's poles.

- 13.2 Licensee shall exercise precaution to avoid damaging the facilities of Licensor and of others attached to Licensor's poles, and Licensee assumes all responsibility for any and all loss from such damage caused by Licensee's employees, agents or contractors. Licensee shall make an immediate report to Licensor and any other user of the occurrence of any such damage and agrees to reimburse the respective parties for all costs incurred in making repairs.
- 13.3 Licensor shall exercise precaution to avoid damaging the facilities of Licensee. Licensor shall make an immediate report to Licensee of the occurrence of any such damage and agrees to reimburse the respective parties for reasonable, direct costs incurred in making repairs.
- 13.4 Except to the extent as may be caused by the negligence of Licensor, Licensee shall defend, indemnify and save harmless Licensor against and from any and all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses arising from or in connection with this Agreement (including reasonable attorneys' fees) including, but not limited to, those which may be imposed upon, incurred by or asserted against Licensor, by reason of:
  - (a) any work or action done upon the poles licensed hereunder or any part thereof performed by Licensee or any of its agents, contractors, servants, or employees;
  - (b) any use, occupation, condition, operation of said poles or any part thereof by Licensee or any of its agents, contractors, servants, or employees;
  - (c) any act or omission on the part of Licensee or any of its agents, contractors, servants, or employees, for which Licensor may be found liable;
  - (d) any accident, injury (including death) or damage to any person or property occurring upon said poles or any part thereof arising out of any use thereof by Licensee or any of its agents, contractors, servants, or employees;
  - (e) any failure on the part of Licensee to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement;

- (f) payments made under any Workers' Compensation Law or under any plan for employees disability and death benefits arising out of any use of the poles by Licensee or any of its agents, contractors, servants, or employees;
- (g) the erection, maintenance, presence, use, occupancy or removal of Licensee's Facilities by Licensee or any of its agents, contractors, servants, or employees or by their proximity to the facilities of other parties attached to Licensor's poles; provided that Licensee shall defend, indemnify, and save harmless Licensor against and from any and all such liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses brought, made or asserted by any of Licensee's agents, contractors, servants, or employees of any of Licensee's contractors or agents; or by
- (h) any and all such liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses brought, made or asserted by any of Licensee's agents, contractors, servants, or employees of any of Licensee's contractors or agents.

13.5 Licensee shall indemnify, save harmless and defend Licensor from any and all claims and demands of whatever kind which arise directly or indirectly from the operation of Licensee's attachments, including taxes, special charges by others, claims and demands for damages or loss for infringement of copyright, for libel and slander, for unauthorized use of television broadcast programs, and for unauthorized use of other program material, and from and against all claims and demands for infringement of patents with respect to the manufacture, use and operation of Licensee's poles, or otherwise.

The provisions of this Article shall survive the expiration or earlier termination of this Agreement or any license issued thereunder.

#### ARTICLE XIV - INSURANCE

- 14.1 Licensee and its subcontractors (if any) agree to purchase and maintain during the term hereof all insurance and/or bonds required by law or this Agreement including without limitation:
- (a) Commercial General Liability Insurance (including, but not limited to, premises-operations, explosion and collapse, underground hazard, broad form property damage, products/completed operations, contractual liability, independent contractors, personal injury) with limits of at least \$2,000,000. combined single limit for each occurrence. (Limits may be satisfied with primary and/or excess coverage.)

- (b) Commercial Automobile Liability with limits of at least \$2,000,000. combined single limit for each occurrence.
  - (c) Workers' Compensation insurance as required by Statute, and Employer's Liability insurance with limits of not less than \$1,000,000. per occurrence.
- 14.2 All insurance must be in effect before Licensor will authorize Licensee to make attachment to Licensor's pole(s) and shall remain in force until such Attachments have been removed from all such poles.
- 14.3 Licensee shall annually submit to Licensor satisfactory evidence of such insurance by an ACORD Form or other satisfactory form in general use by the insurance industry for each company insuring Licensee to the effect that it has insured Licensee for all liabilities of Licensee covered by this Agreement; and that such certificates will name the Licensor as an additional insured under the public liability policy and that it will not cancel or change any such policy of insurance issued to Licensee except after giving of not less than sixty (60) days written notice to Licensor. In the case of a self-insured Licensee, Licensor may elect to accept satisfactory evidence of such self-insurance in lieu of the ACORD Form.

#### ARTICLE XV - GENERAL PROVISIONS

15.1 Authorization Not Exclusive

Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to Licensee. Licensor shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any pole covered by this Agreement.

15.2 Failure to Enforce

Failure of Licensor to enforce or insist upon compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a general waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

15.3 Notices

APPENDIX II sets forth where written notices required under this agreement shall be sent to Licensor and Licensee. Notice shall be acceptable in the following forms: first class mail, or if time-sensitive, facsimile followed by first

class mail or overnight mail with receipt. Licensee shall complete APPENDIX II and submit it to Licensor with this Agreement.

15.4 Severability

If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions. If the invalid or unenforceable provision or provisions shall be considered an essential element of this Agreement, the parties shall promptly attempt to negotiate a substitute therefor.

15.5 Choice of Law

The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State or Commonwealth where the Licensor's poles are located, as set forth in this Agreement, without regard to the principles of conflicts of law. All actions under this Agreement shall be brought in a court of competent subject-matter jurisdiction of the county of the capital of such State or Commonwealth or a regulatory agency with subject-matter jurisdiction, and both parties agree to accept and submit to the personal jurisdiction of such court or regulatory agency. Licensee also agrees to submit to the jurisdiction of any court in the United States wherein an action is commenced against Licensor based on a claim for which Licensee has indemnified Licensor hereunder.

15.6 Compliance with Laws

The parties hereto shall at all times observe and comply with, and the provisions of this Agreement are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties hereto under this Agreement, so long as such laws, ordinances, or regulations remain in effect.

Licensee agrees to indemnify and hold harmless Licensor for, from and against and defend Licensor against, any loss or damage sustained because of Licensee's noncompliance hereunder.

15.7 Survival

All rights and obligations hereunder granted or incurred prior to and which by their nature would continue beyond the cancellation, termination, or expiration of this Agreement shall survive such cancellation, termination, or expiration.

15.8 Use of Information

Licensee may provide to Licensor license applications and business plans of its future needs for pole attachments. Such information will allow Licensor to better forecast personnel and equipment requirements. However, as to business plans, such information shall be deemed for use as advance planning purposes only, and no obligation shall be created that Licensor hire personnel or purchase equipment, or Licensee submit license applications for the pole attachments. Such information shall be used only by such employees or contractors of Licensor who have responsibilities relating to the administration of, or to work to be performed under, this Agreement and said employees shall treat such information as Licensor treats its own confidential information of similar type and value. Licensor's obligations hereunder shall not extend to any information that are now available to the public or become available by reason of acts or omissions not attributable to Licensor.

15.9 Access to Records

Licensor, upon receipt of written request, shall provide access to Licensor's pole records in accordance with "Job Aid For Requests To Records" attached hereto as APPENDIX VIII. Licensor may update this form from time to time during the term of this Agreement.

15.10 Dispute Resolution

In the case where Licensee claims that a term or condition is unjust or unreasonable, Licensee shall submit a complaint to the Manager-License Administration Group, specifying all information and its argument relied on to justify its claim. Licensor shall provide a written response to such complaint within 10 business days after receipt of the complaint. Such response shall specifically address all contentions made by Licensee. If Licensee continues to have issues, it may request a meeting with Manager-License Administration Group to discuss such issues. Such meeting shall be held within five (5) business days. If the Licensee is not satisfied with the results of such meeting, it may file a complaint with the regulatory body of competent jurisdiction.

15.11 Emergency Conditions

All parties shall work cooperatively in the case of an emergency to restore service to their respective customers.

**ARTICLE XVI – TERM OF AGREEMENT**

Except as provided below, this Agreement shall remain in effect; provided, however, that the Licensor may, no less than two years from this date and upon written notice, require the Licensee to engage in good-faith negotiations with the Licensor to amend the Agreement to comport with regulatory changes or obligations, If, the parties cannot agree to an amendment, they shall submit the matter to the regulatory agency with jurisdiction to resolve the matter. The Agreement may be terminated by Licensee by written notice of termination no less than 30 days prior to the effective date of such termination; provided, however, that such early termination shall not become effective until the Licensee has discontinued all existing licenses and has removed any and all facilities. The Agreement may be terminated upon written notice by the Licensor if, within one year from this date, the Licensee has placed no facilities on the Licensor's poles in accordance with the Agreement.

Upon execution, this Agreement cancels and supercedes all previously executed Agreements between the parties. Upon execution, this Agreement cancels and supercedes all previously executed Agreements between Time Warner Entertainment Co., L.P., Warner Cable Communications, Inc., Public Service Company of New Hampshire and Verizon New England Inc

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple originals on the day and year first above written.

Licensor: **VERIZON NEW ENGLAND INC.**

By: S. Mercer  
(Print Name) Susan Dyer Mercer

(Title) for Director Outside Plant Engineering

(Date) 2/4/04

Licensor: **PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

By: J. Libby  
(Print Name) John G. Libby

(Title) Director of Energy Delivery

(Date) 9/29/03

Licensee: **TIME WARNER ENTERTAINMENT CO., L.P.**

By: C. Graviss

(Print Name) CHRISTOPHER S. GRAVISS  
(Title) VP ENGINEERING

(Date) 1/26/04

VERIZON NEW ENGLAND INC.

## APPENDICES

- I. ATTACHMENT FEES and CHARGES
- II. NOTICE ADDRESSES
- III. PLANNING MANAGER'S AREA
- IV. LICENSE APPLICATIONS FORMS
  - Application and Pole Attachment License Form 1
  - Authorization for Field Survey Work Form 2
  - Itemized Pole Make-ready Work and Charges Form 3
  - Authorization for Pole Make-ready Work Form 4
  - Licensee Itemized Self Survey Form 5
  - Notification of Discontinuance of Use of Poles Form 6
  - Project Management Request Form 7
  - Licensee to RCE Notification Form 8
  - Power Supply Schematic Form 10
- V. REBUILD
- VI. OVERLASH BY LICENSEE TO THEIR OWN FACILITIES
- VII. POWER SUPPLIES
- VIII. JOB AID FOR REQUESTS TO RECORDS

**APPENDIX I****ATTACHMENT FEES and CHARGES  
VERIZON NEW ENGLAND Inc.****2. Attachment Fees**

Annual Attachment Fees are as follow:

<b>State</b>	<b>JO/JU</b>	<b>Sole Owned</b>
<b>MA</b>	\$2.40	\$4.80
<b>ME</b>	\$4.80	\$9.60
<b>NH</b>	\$4.84	\$9.67
<b>RI</b>	\$3.32	\$6.64

**VT ATTACHMENT FEES and CHARGES  
Effective January 01, 2002**

- \$3.82** Cable Television Operators (not providing local exchange telephone service) - per attachment, per Verizon-VT jointly owned or used pole, per year.
- \$7.64** Cable Television Operators (not providing local exchange telephone service) - per attachment, per Verizon VT solely owned pole, per year.
- \$15.28** Other Attaching Entities (excluding Cable Television Operators not providing local telephone service) - per attachment, per Verizon VT solely owned pole, per year.
- \$ 7.64** Other Attaching Entities (excluding Cable Television Operators not providing local exchange telephone service) - per attachment, per Verizon-VT jointly owned or used pole, per year.

**For poles in Burlington Electric Department service territory only:**

- \$3.44** Cable Television Operators (not providing local exchange telephone service) - per attachment, per Verizon VT jointly owned or used pole, per year.
- \$6.88** Other Attaching Entities (excluding Cable Television Operators not providing local exchange telephone service) - per attachment, per Verizon VT jointly owned pole, per year.

VERIZON NEW ENGLAND INC.

Attachment Fees are calculated from the first day of the month following the date the license is issued.

Fees shall be payable semi-annually in advance, unless otherwise provided. Payment is due within the later of thirty (30) days from the first day of January and the first day of July or thirty (30) days from the date the bill is issued.

VERIZON NEW ENGLAND INC.

**APPENDIX I****ATTACHMENT FEES and CHARGES****PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**1. Attachment Fees

Annual Attachment Fees are as follows:

<b>State</b>	<b>JO/JU</b>	<b>Sole Owned</b>
<b>NH</b>	\$4.10	\$8.20

Attachment Fees are calculated from the first day of the month following the date the license is issued.

Fees shall be payable **semi-annually** in advance, unless otherwise provided. Payment is due within the later of thirty (30) days from the first day of January and the first day of July or thirty (30) days from the date the bill is issued.

**APPENDIX II**

**NOTICE ADDRESSES**

Licensor – Verizon New England Inc.

All Notices are to be sent to:

Verizon New England Inc.  
Manager - License Administration Group  
185 Franklin Street, Room 503  
Boston, Massachusetts 02110  
Attention: Patricia A. Capewell  
Title: Specialist  
Tel: 617-743-5724  
Fax: 617-743-8785

Licensor – Public Service Company of New Hampshire

All Notices are to be sent to:

Public Service Company of New Hampshire  
60 West Pennacook Street  
Manchester, NH 03105  
Attention: Mr. Russel D. Johnson  
Title: Supervisor, Distribution Projects  
Tel: 603-634-3440  
Fax: 603-634-3550

Licensee – Time Warner Entertainment Co., L.P.

All Notices will be sent to the contacts as listed in the following Customer Profile form:

**For Notices and Renewals:**

Mr. Thomas Casey  
Attn: Legal Department  
11 Eagle Court  
Keene, NH 03431

**For Invoices and Licensing**

Mr. Thomas Casey  
Attn: Billing Department  
11 Eagle Court  
Keene, NH 03431

A blank form may also be utilized to provide Verizon with updated notice addresses as necessary. Please send updated information to:

Verizon New England Inc.  
Specialist, License Administration Group  
185 Franklin Street, Room: 503  
Boston, MA 02110

VERIZON NEW ENGLAND INC.

DATE: \_\_\_\_\_

**Customer Profile**

**son Negotiating Agreement** \_\_\_\_\_

*(Name of person we may contact if there are questions)*

**LICENSEE NAME** \_\_\_\_\_ **State of Incorporation** \_\_\_\_\_

*(legal company name in which you are registered in the state to do business)*

**Municipality(ies) for which contacts below apply:**

**(Please use multiple pages as required)**

<b>Address where <u>Legal Notices</u> are to be sent:</b>		<b>Address where <u>Insurance Notices</u> are to be sent:</b>	
Contact Name		Contact Name	
Title		Title	
Address		Address	
City, State, Zip		City, State, Zip	
Attention:		Attention:	
Tel #	Fax #	Tel #	Fax #
E-mail address		E-mail address	
<b>Address where <u>Automatic License Requests</u> are to be sent:</b>		<b>Address where <u>Poles/ Conduit Rental Bills</u> are to be sent:</b>	
Contact Name		Contact Name	
Title		Title	
Address		Address	
City, State, Zip		City, State, Zip	
Attention:		Attention:	
Tel #	Fax #	Tel #	Fax #
E-mail address		E-mail address	
<b>Address where <u>Transfer Notices</u> are to be sent:</b>		<b><u>Person to notify in emergency</u> of damaged plant:</b>	
Contact Name		Contact Name	
Title		Title	
Address		Address	
City, State, Zip		City, State, Zip	
Tel #	Fax #	Tel #	Fax #
E-mail address		E-mail address	

Please utilize this form to update as necessary, and send to:

This form has been completed by: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

VERIZON NE - License Administration  
 125High St., Room 1406  
 Boston, MA 02110  
 Tel # 1 800 641-2299, Fax # 1 617 743-8785

## APPENDIX III

**State and Municipalities Covered by this Agreement**  
**broken down by**  
**Planning Manager's Area**

**Massachusetts**

*The following list includes all municipalities served by Verizon from the State of Massachusetts with the exception of those served over the boundary from Vermont and Rhode Island. See Vermont and Rhode Island for municipalities served from Vermont and Rhode Island. Other municipalities are served by independent Telephone Companies.*

**Metro-South Ma (Boston Metro Areas)**

BOSTON *	DORCHESTER	MILTON	SCITUATE *
BRAINTREE	DOVER *	NORWELL *	SOMERVILLE *
BROOKLINE*	HINGHAM	NORWOOD *	WEST ROXBURY
CANTON *	HOLBROOK *	QUINCY	WESTWOOD
COHASSET	HULL	RANDOLPH	WEYMOUTH
DEDHAM *	MATTAPAN	ROSLINDALE	

**North Ma (Cambridge-Somerville & Brookline-Newton Areas)**

ARLINGTON	CAMBRIDGE	MEDFORD *	WATERTOWN
BEDFORD *	CHESTNUT STREET	NATICK *	WAYLAND *
BELMONT	DEDHAM *	NEEDHAM	WELLESLEY *
BOSTON *	DOVER *	NEWTON	WESTON
BROOKLINE *	LEXINGTON	SOMERVILLE *	WINCHESTER
BURLINGTON *	LINCOLN *	WALTHAM	WOBURN *

**Northeast Ma (Lawrence-Lowell & Malden-North Shore Areas)**

AMESBURY	GLOUCESTER	MUNIS	TOPSFIELD
ANDOVER	GROTON *	NAHANT	TYNGSBORO
ARBLEHEAD	GROVELAND	NEWBURY	WAKEFIELD
BEDFORD *	HAMILTON	NEWBURYPORT	WENHAM
BEVERLY	HAVERHILL	NORTH ANDOVER	WEST BOXFORD
BILLERICA	IPSWICH	NORTH READING	WEST NEWBURY
BOSTON *	LAWRENCE	PEABODY	WESTFORD *
BOXFORD	LOWELL	PEPPERELL *	WILMINGTON
BURLINGTON *	LYNN	READING	WINTHROP
CARLISLE *	LYNNFIELD	REVERE	WOBURN *
CHELMSFORD	MALDEN	ROCKPORT	
CHELSEA	MANCHESTER	ROWLEY	
DANVERS	MARBLEHEAD	SALEM	<b>also includes...</b>
DRACUT	MEDFORD *	SALISBURY	East Kensington, NH *
DUNSTABLE *	MELROSE	SAUGUS	Hampton, NH *
ESSEX	MERRIMAC	STONEHAM	Kensington, NH *
EVERETT	METHUEN	SWAMPSCOTT	Seabrook, NH *
GEORGETOWN	MIDDLETON	TEWKSBURY	South Hampton, NH

**Massachusetts Continued...****Southeast Ma (Brockton & Cape Areas)**

ABINGTON	DIGHTON	MARION	ROCKLAND
ACUSHNET	DUXBURY	MARSHFIELD	SANDWICH
AQUINNA	EAST BRIDGEWATER	MASHPEE	SCITUATE *
AVON	EASTHAM	MATTAPOISETT	SHARON *
BARNSTABLE	EASTON	MIDDLEBORO	SOMERSET *
BASS RIVER	EDGARTOWN	NANTUCKET	STOUGHTON
BERKLEY	FAIRHAVEN	NEW BEDFORD	SWANSEA *
BOURNE	FALL RIVER	NORTON *	TAUNTON
BREWSTER	FALMOUTH	NORWELL *	TISBURY
BRIDGEWATER	FREETOWN	OAK BLUFFS	TRURO
BROCKTON	GAY HEAD	ORLEANS	WAREHAM
BUZZARDS BAY	HALIFAX	PEMBROKE	WELLFLEET
CARVER	HANOVER	PLYMOUTH	WEST BRIDGEWATER
CHATHAM	HANSON	PLYMPTON	WEST TISBURY
CHILMARK	HARWICH	PROVINCETOWN	WESTPORT
CUTTYHUNK ISLAND	HOLBROOK *	RAYNHAM	WHITMAN
DARTHMOUTH	KINGSTON	REHOBOTH *	YARMOUTH
DENNIS	LAKEVILLE	ROCHESTER	

**Central Ma (Framingham & Worcester Areas)**

ACTON	DUDLEY	LUNENBURG	OXFORD
ASHBURNHAM	DUNSTABLE *	MANSFIELD	PAXTON
ASHBY	EAST BROOKFIELD	MARLBORO	PEPPERELL *
ASHLAND	EAST DOUGLAS	MAYNARD	PETERSHAM
ATHOL	ERVING *	MEDFIELD	PHILLIPSTON
ATTLEBORO *	FITCHBURG	MEDWAY	PLAINVILLE
AUBURN	FOXBORO	MENDON *	PRINCETON
AYER	FRAMINGHAM	MILBURY	REHOBOTH *
BARRE	FRANKLIN	MILFORD	ROYALSTON
BEDFORD *	GARDNER	MILLBURY	RUTLAND
BELLINGHAM *	GRAFTON	MILLIS	SHARON *
BERLIN	GROTON *	NATICK *	SHERBORN
BOLTON	HARVARD	NEW SALEM *	SHIRLEY
BOXBORO	HOLDEN	NORFOLK	SHREWSBURY
BOYLSTON	HOLLISTON	NORTH ATTLEBORO *	SHUTESBURY *
BRIMFIELD *	HOPEDALE	NORTH BROOKFIELD	SOUTHBORO
BROOKFIELD	HOPKINTON	NORTH GRAFTON	SOUTHBRIDGE
CANTON *	HUBBARDSTON	NORTHBORO	SPENCER
CARLISLE *	HUDSON	NORTHBRIDGE	STERLING
CHARLTON	LANCASTER	NORTHFIELD *	STOW
CLINTON	LEICESTER	NORTON *	STURBRIDGE
CONCORD	LEOMINSTER	NORWOOD *	SUDBURY
DOUGLAS	LINCOLN *	OAKHAM	SUTTON
DOVER *	LITTLETON	ORANGE	TEMPLETON

Massachusetts Continued...

## Central Ma (Framingham &amp; Worcester Areas) Continued...

TOWNSEND	WAYLAND *	WEST BROOKFIELD *	WORCESTER
UPTON	WEBSTER	WESTBORO	WRENTHAM *
UXBRIDGE	WELLESLEY *	WESTFORD *	
WALPOLE	WENDELL *	WESTMINSTER	
WARWICK	WEST BOYLSTON	WINCHENDON	

## Western Ma (413 Area)

ADAMS	GILL	MONTEREY	SPRINGFIELD
AGAWAM	GOSHEN	MONTGOMERY	STOCKBRIDGE
ALFORD	GRANBY	MT WASHINGTON	SUNDERLAND
AMHERST	GRANVILLE	NEW ASHFORD	TOLLAND
ASHFIELD	GREAT BARRINGTON	NEW BRAINTREE	TYRINGHAM
BECKET	GREENFIELD	NEW MARLBORO	WALES
BELCHERTOWN	HADLEY	NEW SALEM *	WARE
BERNARDSTON	HAMPDEN	NORTH ADAMS	WARREN
BLANDFORD	HANCOCK	NORTHAMPTON	WASHINGTON
BLANFORD	HARDWICK	NORTHFIELD *	WENDELL *
BRIMFIELD *	HATFIELD	OTIS	WEST BROOKFIELD *
BUCKLAND	HAWLEY	PALMER	WEST SPRINGFIELD
CHARLEMONT	HEATH	PELHAM	WEST STOCKBRIDGE
CHESHIRE	HINSDALE	PERU	WESTFIELD
CHESTER	HOLLAND	PITTSFIELD	WESTHAMPTON
CHESTERFIELD	HOLYOKE	PLAINFIELD	WHATELY
CHICOPEE	HUNTINGTON	RICHMOND	WILBRAHAM
CLARKSBURG	LANESBORO	ROWE	WILLIAMSBURG
COLRAIN	LEE	RUSSELL	WILLIAMSTOWN
CONWAY	LENOX	SANDISFIELD	WINDSOR
CUMMINGTON	LEVERETT	SAVOY	WORTHINGTON
DALTON	LEYDEN	SHEFFIELD	
DEERFIELD	LONGMEADOW	SHELBURNE	also includes...
EAST LONGMEADOW	LUDLOW	SHELBURNE FALLS	STAMFORD, VT
EASTHAMPTON	MIDDLEFIELD	SHUTESBURY *	SOUTH GUILFORD, VT *
EGREMONT	MONSON	SOUTH HADLEY	
ERVING *	MONTAGUE	SOUTHAMPTON	
FLORIDA	MONTAGUE L D	SOUTHWICK	

**Maine**

The following list includes all municipalities served by Verizon from the State of Maine with the exception of those served over the boundary from New Hampshire. See New Hampshire for municipalities served from New Hampshire. Other municipalities are served by independent Telephone Companies.

ABBOT	BOW COLL GRANT	CHERRYFIELD	DREW PLT
ACAD GRANT	BOWDOIN	CHESTER	DURHAM
ACTON *	BOWDOINHAM	CHESTERVILLE	DYER PLT
ADAMSTOWN TWP	BOWERBANK	CHINA	EAST DIXFIELD
ADDISON	BRADFORD	CLIFTON	EAST FRANKLIN
ALEXANDER	BRADLEY	CLINTON	EAST MACHIAS
ALFRED	BREWER	CODYVILLE PLT	EAST MILLINOCKET
ALNA	BRIDGEWATER	COLUMBIA	EAST MOXIE TWP
ALTON	BRIDGTON	COLUMBIA FALLS	EAST NEWPORT
AMITY	BROOKLIN	CONCORD	EASTBROOK
ANDOVER	BROOKS	CONNOR TWP	EASTON
ANSON	BROOKSVILLE	COOPER	EASTPORT
ARGYLE	BROOKTON	COREA	EDDINGTON
ARROWSIC	BROWNVILLE	CORINA	EDGECOMB
ARUNDEL	BROWNVILLE JUCTION	CORINNA	EDGECOME
ASHLAND	BRUNSWICK	CORINTH	EDINBURG
ATKINSON	BUCKS HARBOR	CORNISH	EDMUNDS TWP
ATTEAN TWP	BUCKSPORT	CORNVILLE	EFFINGHAM
AUBURN	BURLINGTON	COSTIGAN	ELIOT *
AUGUSTA	BURNHAM	COUSINS	ELLIOTSVILLE TWP
AVON	BUXTON	CRANBERRY ISLES	ELLSWORTH
BAILEYVILLE	BYRON	CRAWFORD	ENFIELD
BALD MTN	CALAIS	CROUSVILLE	ETNA
BALDWIN	CAMDEN	CUMBERLAND	EXETER
BANCROFT	CANAAN	CUSHING	FAIRFIELD
BAR HARBOR	CANTON	CUTLER	FALMOUTH
BARING PLT	CAPE ELIZABETH	CYR PLT	FARMINGDALE
BATH	CAPE PORPOISE	DALLAS	FARMINGTON
BEALS	CARATUNK	DAMARISCOTTA	FAYETTE
BEARNARD PLT	CARDVILLE	DANFORTH	FOREST CITY TWP
BEAVER COVE PLT	CARIBOU	DARK HARBOR	FOREST TWP
BELFAST	CARMEL	DAVIS PLT	FORKSTOWN
BELGRADE	CARTHAGE	DAYTON	FORT FAIRFIELD
BENTON	CARY PLT	DEDHAM	FOWLER TWP
BERNARD	CASTINE	DEER ISLE	FOXCROFT
BERWICK *	CASTLE HILL	DENMARK	FRANKFORT
BIDDEFORD	CASWELL	DENNISTOWN PLT	FRANKLIN
BIG SQUAW TWP	CASWELL PLT	DENNYVILLE	FREEPORT
BINGHAM	CENTERVILLE	DERBY	FRENCHTOWN TWP
BLAINE	CHAPMAN	DETROIT	FRENCHVILLE
BLANCHARD PLT	CHARLESTON	DEXTER	FRIENDSHIP
BLUE HILL	CHARLOTTE	DIXFIELD	FRIENDSHIP EAST
BOOTHBAY	CHELSEA	DRESDEN	GARDINER

Maine Continued...

GARFIELD	INDUSTRY	LONG POND	MT DESERT
GARLAND	ISLEBORO	LOVELL	MT VERNON
GEORGETOWN	JACKMAN	LOWER CUPSUPTIC TWP	NAPLES
GLENBURN	JACKSONVILLE	LUBEC	NASHVILLE PLT
GLENWOOD PLT	JAY	LUDLOW	NEW GLOUCESTER
GOODWINS MILLS	JEFFERSON	LYMAN	NEW LIMERICK
GORHAM	JOHNSON MOUNTAIN	MACHIAS	NEW SHARON
GOULDSBORO	JONESBORO	MACHIASPORT	NEW SWEDEN
GRAND ISLE	JONESPORT	MACWAHOC PLT	NEW VINEYARD
GRAND LAKE STREAM	KATAHDIN IRON W	MADAWASKA	NEWBURGH
GRAY	KEEGAN	MADISON	NEWCASTLE
GREAT CHEABEAG	KENDUSKEAG	MADRID	NEWFIELD
GREAT WASS	KENNEBUNK	MANCHESTER	NEWPORT
GREENBUSH	KENNEBUNKPORT	MANSET	NEWRY
GREENE	KINEO TWP	MAPLETON	NOBLEBORO
GREENFIELD	KINGSBURY PLT	MARION	NORCROSS
GREENING	KITTERY *	MARION TWP	NORRIDGEWOCK
GREENVILLE	KOKADJO	MARS HILL	NORTH BERWICK
GRINDSTONE TWP	KOSSUTH	MARSHFIELD	NORTH BROOKSVILLE
GUILFORD	LAGRANG	MASARDIS	NORTH DEER ISLE
HALLOWELL	LAKE VIEW PLT	MATTAWANKEAG	NORTH DEERING
HAMDEN	LAKEVIEW PLT	MATTISCONTIS TWP	NORTH EAST HARBOR
HAMLIN	LAMBERT LAKE	MECHANIC FALLS	NORTH HAVEN
HAMMOND	LAMOINE	MEDDYBEMPS	NORTH PERRY
HANCOCK	LANG TWP	MEDFORD	NORTH SANFORD
HANOVER	LARRABEE	MEDWAY	NORTH WHITEFIELD
HARFORDS PT TWP	LEBANON	MEDWAY TWP	NORTH YARMOUTH
HARPSWELL	LEVANT	MEXICO	NORTH YARMOUTH
HARRINGTON	LEWISTON	MILBRIDGE	NORTHFIELD
HARRISON	LILY BAY TWP	MILFORD	NORTHPORT
HARTLAND	LIMERICK	MILLINOCKET	NORWAY
HAYNESVILLE	LIMESTONE	MILLTOWN	OAKLAND
HEBRON	LIMINGTON	MILO	OGUNQUIT
HERMON	LINCOLN *	MILTON	OLD ORCHARD
HERSEY	LINCOLNVILLE	MINOT	OLD TOWN
HERSHEYTOWN TWP	LINNEUS	MISERY GORE	ORANEVILLE
HIRAM	LISBON	MISERY TWP	ORIENT
HODGDON	LISBON FALLS	MOLUNKUS	ORLAND
HOLDEN	LISTONE	MONHEGAN	ORNEVILLE
HOPE	LITCHFIELD	MONROE	ORONO
HOPKINS ACAD GRANT	LITTLE DEER ISLE	MONSON	ORRINGTON
HOULTON	LITTLE JOHNS	MONTICELLO	OTIS
HOWLAND	LITTLE SQUAW TWP	MOOSE RIVER	OTISFIELD
HUDSON	LITTLETON	MORO PLT	OWLS HEAD
INDIAN ISLAND	LIVERMORE	MOSCOW	OXBOW PLT
INDIAN PURCHASE	LIVERMORE FALLS	MOUNT DESERT	OXFORD
INDIAN TWP	LONG A TWP	MOXIE GORE	PALMYRA

Maine Continued...

PARIS	ROME	STANDISH	WASHINGTON TWP
PARKMAN	ROQUE BLUFFS	STARKS	WATERBORO
PARLIN POND	ROXBURY	STETSONTOWN TWP	WATERFORD
PARSONFIELD	RUMFORD	STEUBEN	WATERVILLE
PASSADUMKEAG	SABATTUS	STILLWATER	WAYNE
PATTEN	SACO	STOCKHOLM	WELD
PEAKS ISLAND	SANDBAR TRACT	STOCKTON	WELLS
PEMBROKE	SANDY BAY	STONEHAM	WESLEY
PENOBSCOT	SANDY RIVER PLT	STONINGTON	WEST BATH
PERHAM	SANFORD	STRONG	WEST BROOKSVILLE
PERKINS TWP SI	SANGERVILLE	SULLIVAN	WEST ENFIELD
PERRY	SAPLING TWP	SUNSET	WEST FORKS PLT
PERU	SARGENTVILLE	SUNSHINE	WEST GARDINER
PHILLIPS	SCARBOROUGH	SURRY	WEST GOULDSBORO
PHIPPSBURG	SEAL HARBOR	SUTTON	WEST HARRINGTON
PITTSFIELD	SEARSPORT	SWANVILLE	WEST JONESPORT
PITTSTON	SEBAGO	SWEDEN	WEST NEWFIELD
PLEASANT POINT	SEBEC	SYMRNA	WEST PARIS
PLEASANT RIDGE PLT	SEDGWICK	TALMADGE	WESTBROOK
PLYMOUTH	SHAPLEIGH	TAUNTON & RAYNHAM	WESTFIELD
POLAND	SHAPLEIGHT	TEMPLE	WESTMANLAND PLT
PORT SLYDE	SHIRLEY	TENANTS HARBOR	WESTON
PORTAGE LAKE	SIDNEY	THE FORKS	WESTPORT
PORTER	SKOWHEGAN	THOMASTON	WHITEFIELD
PORTLAND	SOLDIERTOWN TWP	TOMHEGAN TWP	WHITING
POWNAI	SOLON	TOPSFIELD	WHITNEYVILLE
PRENTISS PLT	SOMERVILLE	TOPSHAM	WILLIAMSBURG PLT
PRESQUE ISLE	SONESVILLE	TREMONT	WILLIMANTIC
PRINCETON	SORRENTO	TRENTON	WILTON
PROSPECT	SOUTH ADDISON	TRESCOTT TWP	WINDHAM
PROSPECT HARBOR	SOUTH BERWICK	TURNER	WINDSOR
QUODDY	SOUTH BROOKSVILLE	UPPER ENCHANTED	WINN
RANDOLPH	SOUTH LAGRANGE	VAN BUREN	WINSLOW
RANGELEY	SOUTH PORTLAND	VANCEBORO	WINTER HARBOR
RANGELEY PLT	SOUTH THOMASTON	VASSALBORO	WINTERPORT
RAYMOND	SOUTH WEST HARBOR	VEAZIE	WINTHROP
READFIELD	SOUTHPORT	VERONA	WISCASSET
REED	SPRINGVALE	VINAL HAVEN	WOODLAND
RICHMOND	SQUAPAN	WADE	WOODSTOCK
RIPLEY	SQUAPAN TWP	WAITE	WOODVILLE
ROBBINSON	SRV FR MCDAM N B	WALDO	WOOLWICH
ROBINSONS	ST AGATHA	WALDOBORO	YARMOUTH
ROCKLAND	ST ALBANS	WALES	YORK
ROCKPORT	ST DAVID	WALTHAM	YORK BEACH
ROCKWOOD	ST GEORGE	WARREN	
ROCKWOOD STRIP	STACYVILLE	WASHBURN	

**New Hampshire**

The following list includes all municipalities served by Verizon from the State of New Hampshire with the exception of those served over the boundary from Massachusetts and Vermont. See Massachusetts and Vermont for municipalities served from Massachusetts and Vermont. Other municipalities are served by independent Telephone Companies.

ACTON	CLAREMONT	GILMANTON	LEBANON *
ACWORTH	CLARKSVILLE	GILMANTON IW	LEE
ALBANY	COLEBROOK	GILSUM	LEMPSTER
ALEXANDRIA	COLUMBIA	GLENDALE	LINCOLN
ALLENSTOWN	CONCORD	GOFFSTOWN	LISBON
ALSTEAD	CONWAY	GORHAM	LITCHFIELD
ALTON	CORNISH *	GOSHEN	LITTLETON
AMHERST	CROYDON	GRAFTON	LONDONDERRY
ANDOVER	CTR HARBOR	GRANTHAM	LOUDON
ANTRIM	CTR SANDWICH	GREENFIELD	LYMAN
ASHLAND	DALTON	GREENLAND	LYME *
ATKINSON	DANBURY	GREENVILLE	LYNDEBORO
AUBURN	DANVILLE	GROTON	LYNDEBOROUGH
BARNSTEAD	DEERFIELD	GROVETON	MADBURY
BARRINGTON	DERRY	HAMPSTEAD	MADISON
BARTLETT	DORCHESTER	HAMPTON *	MANCHESTER
BATH	DOVER	HAMPTON FALLS	MARLBORO
BEDFORD	DUBLIN	HANCOCK	MARLBOROUGH
BELMONT	DUMMER	HANOVER	MARLOW
BENNINGTON	DUNBARTON	HARRISVILLE	MASON
BENTON	DURHAM	HARTS LOCA	MEREDITH
BERLIN	E KINGSTON	HAVERHILL	MERRIMACK
BETHLEHEM	EAST HAMPSTEAD	HEBRON	MIDDLETON
BOSCAWEN	EAST KINGSTON *	HILL	MILAN
BOW	EAST SWANSEY	HILLSBORO	MILFORD
BRENTWOOD	EASTON	HINSDALE *	MILTON
BRIDGEWATER	EATON	HOLDERNESS	MILTON FALLS
BRISTOL	EFFINGHAM	HOLLIS	MONROE *
BROOKFIELD	ELLSWORTH	HOOKSETT	MONT VERNON
BROOKLINE	ENFIELD	HOPKINTON	MOULTONBOROUGH
CAMPTON	EPPING	HUDSON	N CONWAY
CANAAN	EPSOM	JACKSON	N HAMPTON
CANDIA	ERROL	JAFFREY	N HAVERHILL
CANTERBURY	EXETER	JEFFERSON	NASHUA
CARROLL	FARMINGTON	KEENE	NELSON
CENTER HARBOR	FITZWILLIAM	KENSINGTON	NEW BOSTON
CENTER OSSIPEE	FRANCESTOWN	KINGSTON *	NEW CASTLE
CHARLESTOWN	FRANCONIA	KITTERY	NEW HAMPTON
CHATHAM	FRANKLIN	LACONIA	NEW IPSWICH
CHESTER	FREEDOM	LANCASTER	NEW LONDON
CHESTERFIELD *	FREMONT	LANDAFF	NEWBURY
CHICHESTER	GILFORD	LANGDON	NEWFIELDS

New Hampshire Continued...

NEWINGTON	PLAISTOW	SOUTH NASHUA	TUFTONBORO
NEWMARKET	PLYMOUTH	SPOFFORD	TWIN MOUNTAIN
NEWPORT	PORTSMOUTH	SPRINGFIELD	UNITY
NEWTON	RANDOLPH	STAFFORD	W STEWARTSTOWN
NORTH CUMBERLAND	RAYMOND	STARK	WAKEFIELD
NORTH STRATFORD	RICHMOND	STEWARTSTOWN	WALPOLE *
NORTH UMBERLAND	RINDGE	STODDARD	WARREN
NORTH WOODSTOCK	ROCHESTER	STRAFFORD	WASHINGTON
NORTHFIELD	ROLLINGSFORD	STRATFORD	WATERVILLE VALLEY
NORTHUMBERLAND	ROXBURY	STRATHAM	WEATHERSFIELD
NORTHWOOD	RUMNEY	SUGAR HILL	WEIRS
NORWICH	RYE	SULLIVAN	WENTWORTH
NOTTINGHAM	RYE BEACH	SUNAPEE	WEST LEBANON
ORANGE	S NASHUA	SUNCOOK	WEST MORELAND
OSSIPEE	SALEM	SURRY	WEST SWANSEY
PELHAM	SALISBURY	SUTTON	WESTMORELAND
PEMBROKE	SANBORNTON	SWANSEY	WHITEFIELD
PENACOOK	SANBORNVILLE	SWANZEY	WILMOT
PETERBOROUGH	SANDOWN	TAMWORTH	WILTON
PIERMONT *	SANDWICH	TEMPLE	WINCHESTER
PIKE	SEABROOK *	THETFORD	WINDHAM
PITTSBURG	SHARON	THORNTON	WOLFEBORO
PITTSFIELD	SHELBURNE	TILTON	WOODSTOCK
PLAINFIELD *	SOMERSWORTH	TROY	WOODSVILLE

also includes...

ACTON, ME *	BLOOMFIELD, VT	MAIDSTONE, VT
BERWICK, ME *	BRUNSWICK, VT	NEWBURY, VT *
ELIOT, ME *	CANAAN, VT	NORWICH, VT *
KITTERY, ME*	GRANBY, VT	RYEGATE, VT *
LINCOLN, ME *	GUILDHALL, VT	THETFORD, VT *
MAGALLOWAY, ME	LEMINGTON, VT	VICTORY, VT *
NORTH OXFORD, ME	LUNENBURG, VT *	WESTMINSTER, VT *

**Rhode Island**

*The following list includes all municipalities served by Verizon from the State of Rhode Island.*

ASHTON	EXETER	NORTH KINGSTON	TIVERTON
BARNGTON	FOSTER	NORTH PROVIDENCE	WARREN
BRISTOL	GLOUCESTER	NORTH SMITHFIELD	WARWICK
BURLLVILLE	GREENVILLE	PASCOAG	WEST GREENWICH
CAROLINA	HOPKINTON	PAWTUCKET	WEST WARWICK
CENT FALLS	JAMESTOWN	PORTSMOUTH	WESTERLY
CENTREDALE	JOHNSTON	PROVIDENCE	WESTPORT
CHARLESTOWN	LINCOLN	PRUDENCE ISLAND	WOONSOCKET
COVENTRY	LITTLE COMPTON	RICHMOND	
CRANSTON	MIDDLETOWN	RIVERSIDE	
CUMBERLAND	NARRAGANSETT	SCITUATE	
EAST GREENWICH	NEW SHOREHAM	SMITHFIELD	
EAST PROVIDENCE	NEWPORT	SOUTH KINGSTON	

**also includes...**

ATTLEBORO, MA *	NORTH ATTLEBORO, MA *
BELLINGHAM, MA *	REHOBOTH, MA *
BLACKSTONE, MA	SEEKONK, MA
MENDON, MA *	SWANSEA, MA *
MILLVILLE, MA	WRENTHAM, MA *

Vermont

The following list includes all municipalities served by Verizon from the State of Vermont with the exception of those served over the boundary from Massachusetts and New Hampshire. See Massachusetts and New Hampshire for municipalities served from Massachusetts and New Hampshire. Other municipalities are served by independent Telephone Companies.

ALBANY	E MONTPELIER	LEICHESTER	READSBORO
ARLINGTON	EAST HAVEN	LONDONDERRY	RICHFORD
BAKERFIELD	EDEN	LOWELL	RIPTON
BAKERSFIELD	ELMORE	LUNENBURG *	ROCHESTER
BARNARD	ENOSBURG	LYNDON	ROCKINGHAM
BARNET	ENOSBURG FALLS	LYNDONVILLE	ROXBURY
BARRE	ESSEX	MANCHESTER	ROYALTON
BARTON	ESSEX JUNCTION	MARLBORO	RUPERT
BELVIDERE	FAIR HAVEN	MARSHFIELD	RUTLAND
BENNINGTON	FAIRFAX	MENDON	RYEGATE *
BERKSHIRE	FAIRFIELD	MIDDLEBURY	S ROYALTON
BERLIN	FAIRLEE	MIDDLESEX	SALISBURY
BETHEL	FERDINAND	MILTON	SANDGATE
BINGHAMVILLE	FERRISBURG	MONKTON	SAXTONS RIVER
BRADFORD	FLETCHER	MONROE BRIDGE	SEARSBURG
BRAINTREE	GEORGIA	MONTGOMERY	SHAFTSBURY
BRANDON	GLASTENBURY	MONTPELIER	SHARON
BRATTLEBORO	GLOVER	MORETOWN	SHEFFIELD
BRIDGEWATER	GOSHEN	MORGAN	SHELBURNE
BRIGHTON	GRAND ISLE	MORRISTOWN	SHELDON
BROOKFIELD	GRANVILLE	NEW HAVEN	SHERBURNE
BROOKLINE	GREENSBORO	NEWARK	SO BURLINGTON
BROWNINGTON	GUILFORD	NEWBURY *	SOMERSET
BURKE	HALIFAX	NEWFANE	SOUTH HERO
BURLINGTON	HANCOCK	NEWPORT	SOUTH STRAFFORD
CALAIS	HARDWICK	NEWPORT TOWN	ST ALBANS
CAMBRIDGE	HARTFORD	NORTH HERO	ST GEORGE
CASTLETON	HARTLAND	NORWICH *	ST JOHNSBURY
CAVENDISH	HIGHGATE	ORANGE	STANNARD
CHARLOTTE	HOLLAND	ORLEANS	STOCKBRIDGE
CHELSEA	HYDE PARK	PANTON	STOWE
CHITTENDEN	IRA	PEACHAM	STRAFFORD
CLARENDON	IRASBURG	PERU	STRATTON
COLCHESTER	ISLAND POND	PITTSFIELD	SUDBURY
CONCORD	JACKSONVILLE	PITTSFORD	SUNDERLAND
COVENTRY	JAMAICA	POMFRET	SUTTON
DANVILLE	JAY	POULTNEY	SWANTON
DERBY	JEFFERSONVILLE	POWNAI	THETFORD *
DORSET	JERICO	PROCTOR	TOWNSHEND
DOVER	JOHNSON	PUTNEY	TROY
DUMMERSTON	KIRBY	RANDOLPH	TUNBRIDGE
DUXBURY	LANDGROVE	READING	UNDERHILL

Vermont Continued...

VERGENNES	WATERVILLE	WESTFORD	WINHALL
VERNON	WEATHERSFIELD	WESTMINISTER *	WINOOSKI
VERSHIRE	WELLS	WESTMORE	WOLCOTT
VICTORY *	WEST BURKE	WESTON	WOODBURY
WALDEN	WEST FAIRLEE	WHEELOCK	WOODFORD
WALTHAM	WEST HAVEN	WHITINGHAM	WOODSTOCK
WARDSBORO	WEST LEBANON	WILLISTON	WORCESTER
WASHINGTON	WEST RUTLAND	WILMINGTON	
WATERBURY	WEST WINDSOR	WINDHAM	
WATERFORD	WESTFIELD	WINDSOR	

also includes...

CHARLESTON, NH *	ORFORD, NH
CHESTERFIELD, NH *	PIERMONT, NH *
CORNISH, NH *	PLAINFIELD, NH *
HINSDALE, NH	WALPOLE, NH *
LEBANON, NH *	MONROE BRIDGE, MA
LYME, NH *	HAMPTON, NY
MONROE, NH *	LOW HAMPTON, NY

**APPENDIX IV**

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Revised 12/12/01

**APPLICATION AND POLE ATTACHMENT LICENSE Form 1**

Licensee TIME WARNER ENTERTAINMENT CO., L.P.  
Street Address \_\_\_\_\_  
City, State and Zip \_\_\_\_\_  
Date \_\_\_\_\_

In accordance with the terms and conditions of the Pole Attachment Agreement, application is hereby made for a license to make \_\_\_\_\_ attachments to poles and \_\_\_\_\_ Power Supply and \_\_\_\_\_ other attachments located in municipality of, \_\_\_\_\_, State of New Hampshire.

This request will be designated **Pole Attachment License Application Number** \_\_\_\_\_ . Attached are my power supply specifications if applicable. The cable's strand size is \_\_\_\_\_ and weight per foot of cable is \_\_\_\_\_.

Licensee's Name (Print) \_\_\_\_\_  
Signature \_\_\_\_\_  
**PSNH**  
**Power Company** Title \_\_\_\_\_  
Tel. No. \_\_\_\_\_  
Fax No. \_\_\_\_\_  
E-mail \_\_\_\_\_

\*\*\*\*\*For licensor use, do not write below this line\*\*\*\*\*

Pole Attachment License Application Number \_\_\_\_\_ is hereby granted to make the attachments described in this application to \_\_\_\_\_ attachments to JO<sup>1</sup> poles, \_\_\_\_\_ attachments to FO<sup>2</sup> poles, \_\_\_\_\_ attachments to JU<sup>3</sup> poles and \_\_\_\_\_ Power Supplies and \_\_\_\_\_ other attachments located in the municipality of \_\_\_\_\_, State of New Hampshire as indicated on the attached form 3.

Licensor's Name (Print) \_\_\_\_\_  
Signature \_\_\_\_\_  
417.431/186  
(AGREEMENT ID #) Title \_\_\_\_\_  
Date \_\_\_\_\_  
Tel. No. \_\_\_\_\_

**Licensee shall submit an original copy of this application to Verizon New England Inc. and the appropriate Power Company**

Revised 03/07/02

VERIZON NEW ENGLAND INC.

## FORM 1 INSTRUCTIONS

Individual applications to be numbered in sequential ascending order by Licensee for each Pole Attachment License. Licensor will process applications in sequential ascending order according to the application numbers assigned by the Licensee.

◆ Provide a separate application for each municipality

Note: (For municipalities served by more than one Power Company a separate application for each Power Company area must be provided.)

◆ Limit the number of poles to 200 per each application

◆ Attach power supply specifications

◆ Provide the size of your cable strand

◆ Provide the Weight per foot of cable

◆ Other Attachments (Include Riser Information here)

(1) JO = Jointly Owned - a pole in which Verizon New England Inc. has an ownership interest.

(2) FO = Fully Owned/Solely Owned – a pole that is solely owned by Verizon New England Inc. or the Power Company.

(3) JU = Joint Use – A party to whom use of the pole or anchor has been extended by the owner of the facility. The term “Joint User” shall not include Licensees.

**The Licensee shall submit an original copy of this application to Verizon New England Inc. and the appropriate Power Company.**

Revised 03/07/02

Form 2

**AUTHORIZATION FOR FIELD SURVEY WORK**

Licensee: Time Warner Entertainment Co., L.P.

In accordance with Article III & Appendix I of the Pole Attachment Agreement, following is a summary of the charges which will apply to complete a field survey covering Pole Attachment License Application Number \_\_\_\_\_ in the municipality of \_\_\_\_\_, in the State of New Hampshire.

**FIELD SURVEY CHARGES**

<u>Field Survey</u>	<u>#Poles</u>	<u>Unit Rate</u>	<u>Total</u>
Field Survey 1-10 Poles	_____	\$ _____	\$ _____
Field Survey 11-200 Poles	_____	\$ _____ per Pole	\$ _____
Additional Travel Time*	_____	\$ _____ per Day	\$ _____
<b>TOTAL Charges</b>			\$ _____

\* Based on average of 75 poles surveyed per day, add \$200.00 hours travel time for each additional day required to complete survey.

Please note, if you calculated the cost incorrectly, your check will be returned and a new check for the correct amount must be received by this office in order to schedule the survey. If you need assistance, please call the **HOTLINE on (800) 641-2299**.

The required field survey covering Pole Attachment License # \_\_\_\_\_ is authorized. I am enclosing an advance payment in the amount of \$ \_\_\_\_\_.

Licensee's Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Tel. No. \_\_\_\_\_

Date \_\_\_\_\_

Revised 12/12/01

VERIZON NEW ENGLAND INC.



**FORM 3 Definitions**

**SURVEYORS:** Name of Representative attending Survey from VERIZON, Power Company and Licensee

**Date of Survey :** Date Survey is performed

**EWO#:** Verizon's Engineering Work Order Number

**Munic:** Municipality where pole is located **State:** State in which pole is located

**Licensee Name:** Name of Company or Entity applying for Pole Attachments

**Exch Code:** Verizon's Exchange Code = the Exchange in which the Municipality is located.

**Munic Code:** In Massachusetts, Verizon's Municipality Code = the Municipality in which the pole is located.

**Application #:** The number of the Licensee's Application = sequentially numbered by municipality.

**ELCO NAME:** The name of the Electric (power) Company in whose service area the pole is located.

**Location:** Street, Route, Circuit # and other information which indicates location of poles.  
(1) Indicate location by providing name of street, highway, route, etc., e.g., South Street, north of (N/O) Jones Road. Private Property Poles should be identified as such e.g., P.P. (Lead off pole 1234 South).

**Pole #:**  
Tel = Telephone Company                      El= Electric Company

**ATT:**      **Type of Attachment:** F = Fiber    C= Copper or Coaxial    P.S. = Power Supply    Riser = Riser Pole

**Ownership:**      **JO** = Joint Owned 50%-50% Tel-Elco, **JU** = Joint Use - 100% Tel or 100% Elco, **FO** = 100% Fully owned by Tel or Elco (Other company not on pole)

**Charge:**      **Y or N = Y** = Yes, there are make ready charges, **N** = No, there are no make ready charges to the Applicant.

**Work Description:** Short description of work operations required.

**Task # should also be included and is defined as the number of the task or tasks required for make ready work. The Task # is associated with a Unit Price from the "Make Ready Unit Price Schedule" included in each of the new Pole Attachment Agreements.**

Form 4

**AUTHORIZATION FOR POLE MAKE-READY WORK**

Licensee TIME WARNER ENTERTAINMENT CO., L.P.  
 Field survey work associated with your License Application No. \_\_\_\_\_, dated  
 \_\_\_\_\_, for attachment to poles, in the municipality of \_\_\_\_\_, State of  
New Hampshire has been completed. Following is a summary of the estimated make-ready  
 charges which will apply:

<b>TASK #</b>	<b>QUANTITY</b>	<b>UNIT COST</b>	<b>TOTAL COST</b>
Eng. Work Order Preparation			
Miscellaneous			

Attached, as requested, is an itemized unit cost (Form 3) of required make-ready work and associated charges. If you wish us to complete the required make-ready work, please sign this copy below and return with an advance payment in the amount of \$\_\_\_\_\_.

Licensors Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Tel. No \_\_\_\_\_

Date \_\_\_\_\_

The replacements and rearrangements included in Pole Attachment License Application No. \_\_\_\_\_ are authorized and the costs therefore will be paid to Licensors in accordance with Appendix I to Pole Attachment License Agreement. My check is attached. My anticipated date of attachment is: \_\_\_\_\_

Licensee's Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_ Tel. No. \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

Revised 10/17/01

VERIZON NEW ENGLAND INC.



**LICENSEE SELF-SURVEY FORM  
APPENDIX IV – FORM 5**

**To be used for Overlash/Rebuild/Power Supplies**

Summary = Total Poles Surveyed \_\_\_\_\_ Total Poles Requiring Verizon Make-Ready \_\_\_\_\_

FIELD SURVEY / MAKE READY WORK FORM													
<b>SURVEYORS:</b>				<b>DATE OF SURVEY:</b>				EWO #:					
Verizon				<b>MUNIC:</b>		<b>STATE:</b>		Exch Code:		Munic Code:			
<b>Licensee</b>				<b>LICENSEE NAME:</b>				<b>APP/LIC #:</b>					
<b>ELCO</b>				<b>ELCO NAME:</b>				<b>PAGE ____ OF ____</b>					
LOCATION		POLE #		ATT		OWNERSHIP				CHARGE		WORK DESCRIPTION	
TEL RTE / STREET NAME	Tel	El	F/C P.S. Riser	J.O.		J.U.		F.O.		YES	NO	TASK #S / REMARKS	* Height of Att.
				Tel	El	Tel	El	Tel	El				
													*
													*
													*
													*
													*
<i>TOTALS:</i>													

- Height of Attachment = Height of Licensee Attachment shall be 40" below Elco MGN unless otherwise noted here by Verizon and Elco surveyor.
- Licensee to complete bold italicized areas only. ( Provide ownership information if known)



Form 6

**NOTIFICATION OF DISCONTINUANCE OF USE OF POLES**

This form is to be completed and **mailed to Verizon New England Inc., LICENSE ADMINISTRATION** at the address listed below **and the appropriate power company:**

**Verizon New England Inc.  
 LICENSE ADMINISTRATION  
 185 Franklin Street, Room 503  
 Boston, Massachusetts 02110**

Licensee Time Warner Entertainment Co., L.P.  
 Street Address \_\_\_\_\_  
 City and State \_\_\_\_\_ Date \_\_\_\_\_

In accordance with the terms of Pole Attachment License Agreement dated \_\_\_\_\_ this serves as written notification from Licensee that attachment(s) to the following pole(s) in the municipality of \_\_\_\_\_, State of New Hampshire, are being discontinued (removed) on \_\_\_\_\_. These attachments are covered by Pole Attachment License Application number \_\_\_\_\_.

<u>Pole Number</u>	<u>Location</u>	<u>Attachment</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Total number of attachments to JO<sup>1</sup> poles to be discontinued \_\_\_\_\_.  
 Total number of attachments to FO<sup>2</sup> poles to be discontinued \_\_\_\_\_.  
 Total number of attachments to JU<sup>3</sup> poles to be discontinued \_\_\_\_\_.  
 Total number of Power Supplies/Other Equipment to be discontinued \_\_\_\_\_.

Said license is to be canceled **in its entirety / partially** as above.  
 (circle one)

Licensee \_\_\_\_\_ Print Name \_\_\_\_\_

Signature \_\_\_\_\_ Tel. No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

Revised 11/28/01

VERIZON NEW ENGLAND INC.

FORM 6

APPLICATION # \_\_\_\_\_

LICENSEE NAME Time Warner Entertainment Co., L.P.

MUNICIPALITY \_\_\_\_\_ STATE New Hampshire

-----  
**To be completed by Licensor :**

**It has been verified by Licensor that the number of attachments to be discontinued have been removed from Licensor's poles and the number of attachments have been adjusted as appropriate on the preceding page.**

**VERIZON New England Inc.**

VERIZON Representative (Print Name) \_\_\_\_\_

Signature \_\_\_\_\_ Title \_\_\_\_\_

Tel. No. \_\_\_\_\_ Date: \_\_\_\_\_

- (1) JO = Jointly Owned - a pole in which Verizon New England Inc. has an ownership interest.
- (2) FO = Fully Owned/Sole Owned – a pole that is solely owned by Verizon New England Inc..
- (3) JU = Joint Use – A party to whom use of the pole or anchor has been extended by the owner of the facility. The term “Joint User” shall not include Licensees.

Revised 11/28/01

VERIZON NEW ENGLAND INC.





Verizon New England Inc.  
FORM 8

### Licensee To RCE Notification Form

Licensee Name: \_\_\_\_\_

Municipality: \_\_\_\_\_

State: \_\_\_\_\_ VZ Application # \_\_\_\_\_

- This is to notify you that the facilities (cables, power supplies) have been placed in association with License Application # \_\_\_\_\_ on \_\_\_\_\_ 200\_.
- This is to notify you that an overlash project has been Started Completed (*choose one*) in association with License Application # \_\_\_\_\_ on \_\_\_\_\_ 200\_.
- This is to notify you that a rebuild project has been completed in association with License Application # \_\_\_\_\_ on \_\_\_\_\_ 200\_.
- This is to notify you that a pre-construction survey is necessary for the poles listed on the attached Form 5 requiring Verizon Make-Ready work.

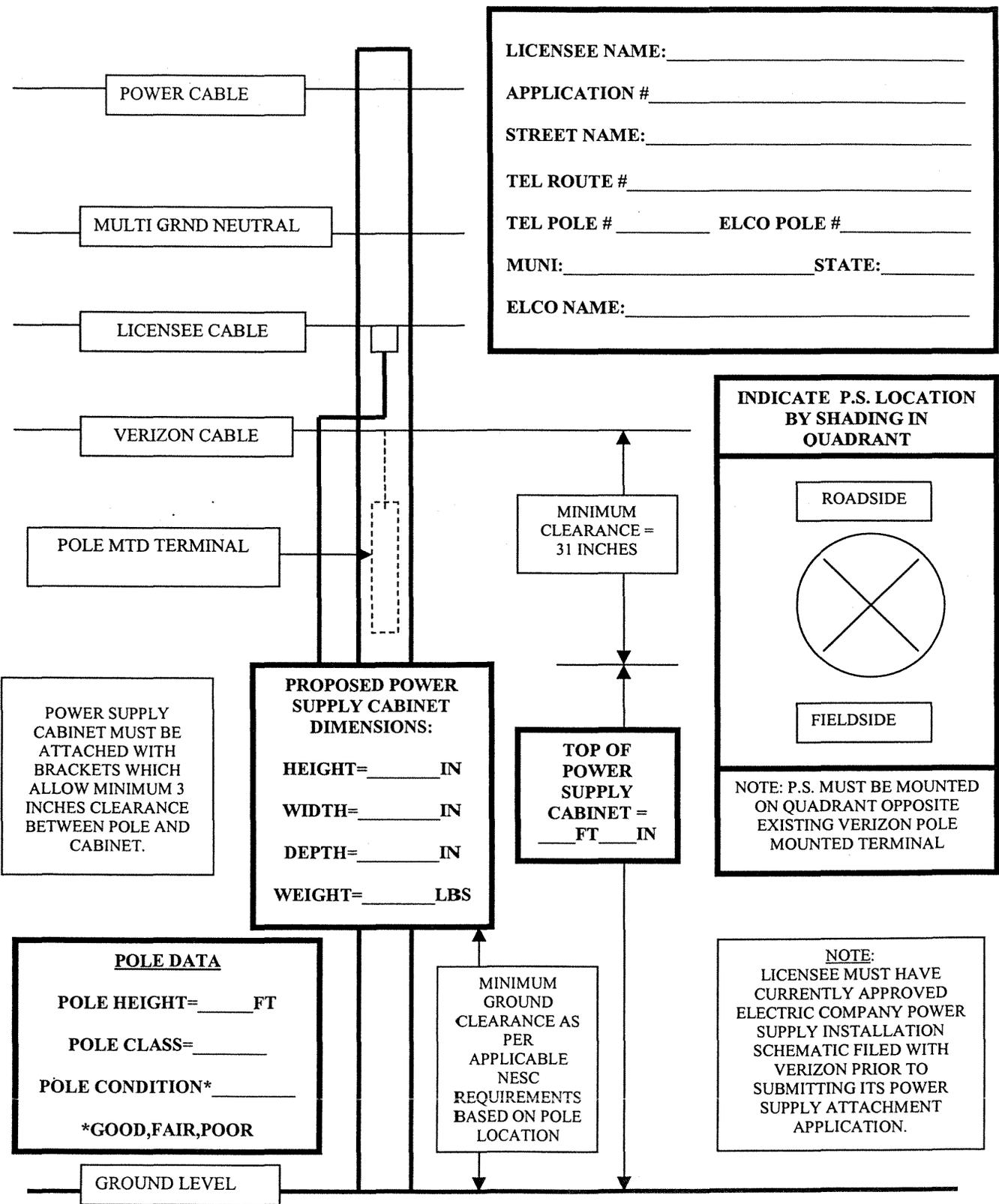
FAX to RCE :

Call the LAG Hotline at 800-641-2299 for appropriate RCE name and fax number.

03/07/02

**LICENSEE POWER SUPPLY SCHEMATIC**

**FORM 10**  
12/11/01



POWER SUPPLY CABINET MUST BE ATTACHED WITH BRACKETS WHICH ALLOW MINIMUM 3 INCHES CLEARANCE BETWEEN POLE AND CABINET.

**PROPOSED POWER SUPPLY CABINET DIMENSIONS:**  
 HEIGHT= \_\_\_\_\_ IN  
 WIDTH= \_\_\_\_\_ IN  
 DEPTH= \_\_\_\_\_ IN  
 WEIGHT= \_\_\_\_\_ LBS

MINIMUM CLEARANCE = 31 INCHES

TOP OF POWER SUPPLY CABINET = \_\_\_\_\_ FT \_\_\_\_\_ IN

**INDICATE P.S. LOCATION BY SHADING IN QUADRANT**

ROADSIDE

FIELD SIDE

NOTE: P.S. MUST BE MOUNTED ON QUADRANT OPPOSITE EXISTING VERIZON POLE MOUNTED TERMINAL

**POLE DATA**  
 POLE HEIGHT= \_\_\_\_\_ FT  
 POLE CLASS= \_\_\_\_\_  
 POLE CONDITION\* \_\_\_\_\_  
 \*GOOD, FAIR, POOR

MINIMUM GROUND CLEARANCE AS PER APPLICABLE NESC REQUIREMENTS BASED ON POLE LOCATION

**NOTE:**  
 LICENSEE MUST HAVE CURRENTLY APPROVED ELECTRIC COMPANY POWER SUPPLY INSTALLATION SCHEMATIC FILED WITH VERIZON PRIOR TO SUBMITTING ITS POWER SUPPLY ATTACHMENT APPLICATION.

GROUND LEVEL

## APPENDIX V

**Procedure for Rebuilding of Existing Licensee's Aerial Attachments**  
**(Commonly known as Rebuild)**

**1 – SCOPE**

In the process of replacing its existing facilities, it may be necessary for the Licensee to conduct a Rebuild project that may involve placing new facilities while keeping existing facilities in operation.

**2 - DEFINITIONS**

- a) **Rebuild** – the act of a Licensee replacing existing facilities, for other than maintenance purposes, accomplished in the following manner:
- 1) The lowering or raising of facilities by a Licensee to a temporary location thereby clearing previously licensed space for a new installation.
  - 2) The placement and activation of new facilities by a Licensee that replace existing Licensee facilities.
  - 3) The transfer of a Licensee's existing customer facilities to Licensee's new facilities being placed.
  - 4) The de-activation and removal of Licensee's replaced facilities.
- b) **Post-construction Inspection** - A Verizon New England inspection consisting of a ten (10) percent sample of the poles after completion of Licensee's Rebuild project. Licensee shall pre-pay Verizon New England for the Post-construction Inspection based on the Unit Pricing Schedule.
- c) **Post-construction Subsequent Inspection** – An inspection, subsequent to the Post-construction Inspection, required as the result of finding greater than 2% non-compliance after the Post-construction Inspection of the 10% sample performed by Verizon New England. Licensee shall prepay Verizon New England for the Post-construction Subsequent Inspection based on the Unit Pricing Schedule.
- d) **Self Pre-survey**– The performance of a field review by a Licensee to survey the routing of a proposed path where the Rebuild project is planned, to determine if any Make-ready Work is required. The Licensee shall adhere to all requirements of the most recent edition of the National Electrical Safety Code (NESC) and the "Manual of Construction Procedures" (Blue Book), published by Telcordia Technologies Inc. This survey is performed without the presence of a Verizon New England representative and the results of the Self Pre-survey shall be provided to the Verizon New England Reimbursable Construction Engineer (RCE) with documentation of any Subsequent Make-ready Work required before Licensee begins construction of the Rebuild project.
- e) **Subsequent Make-ready Work** – Rearrangement of Verizon New England facilities by Verizon New England as determined by the Licensee's Self Pre-survey to provide for clearance and separation requirements for all pole attachments relative to the latest edition of the Blue Book published by Telcordia and the latest edition of the NESC.

- f) **Charges** – Verizon New England’s costs in the Unit Pricing Schedule, based on current Verizon New England unit pricing methodology, for any Post-construction Inspections, Post-construction Subsequent Inspections and Subsequent Make-ready Work performed by Verizon New England and paid for in advance to Verizon New England by the Licensee.

### **3 – SPECIFICATIONS**

Licensee shall conform to the terms and conditions contained within the Specifications Section of the most current Pole Attachment Agreement, including:

**The National Electrical Safety Code (NESC)**

**“Manual of Construction Procedures” (Blue Book), published by Telcordia Technologies Inc.**

### **4 - NOTIFICATION**

Licensee shall provide ten (10) days advance notice in writing to the Verizon New England RCE and coordinate its Rebuild work with the local Verizon New England RCE and construction coordinator to avoid any scheduling conflicts with any Verizon New England construction or maintenance work. Licensee shall submit written notification within thirty (30) days to Verizon New England RCE after their Rebuild work has been completed. RCE will facilitate the Post-construction Inspection.

### **5 – PROCEDURES**

- a) Licensee shall attend a local meeting with Verizon New England engineers to discuss construction schedules, Self Pre-survey, Pre-construction Survey, and Post-construction Inspections.
- b) Licensee shall provide Verizon New England RCE with the following information relative to the Rebuild project:
  - 1) Copies of strand maps indicating those poles where Licensee intends to Rebuild their existing pole attachments.
  - 2) Tension measurements and weight per foot of total facilities that will be attached upon completion of the Rebuild project.
- c) Licensee shall perform a Self Pre-survey of all routes included in the Rebuild project and shall provide written results to Verizon New England’s RCE.
- d) Licensee shall submit a written request to Verizon New England’s RCE to arrange for a Pre-construction Survey of all locations where Licensee has determined Subsequent Make-ready Work is necessary by Verizon New England to accommodate Licensee’s proposed work. Licensee will issue Verizon New England an advance check to cover the applicable charges for the Pre-construction Survey.
- e) Licensee shall also notify any other attacher, Joint Owner or Joint User on the pole that may be affected by the Rebuild project.
- f) Verizon New England RCE shall notify the Licensee of the applicable charges for any type of Make-ready Work. Verizon New England RCE will provide the Licensee with an associated work schedule and estimated construction completion date for the Make-ready Work.

- g) Prior to Verizon New England RCE initiating Make-ready Work, Licensee will forward a check to Verizon New England RCE covering Subsequent Make-ready Work charges.
- h) Licensee may proceed to conduct the Rebuild project in sections of aerial facilities requiring no Make-ready Work. Licensee shall not perform any Rebuild work until the necessary Make-ready Work has been completed by Verizon New England.
- i) Verizon New England may perform a Post-construction Inspection consisting of a ten (10) percent sample of the poles included in the Licensee's Rebuild project. Licensee shall pre-pay Verizon New England for the Post-construction Inspection.
  - 1) If Verizon New England performs a Post-construction Inspection consisting of a ten (10) percent sample of the poles involved in the Licensee's Rebuild project and all work is in compliance with the requirements and specifications, no further inspection will be required.
  - 2) If Verizon New England performs the Post-construction Inspection consisting of a ten (10) percent sample of the poles involved in the Licensee's Rebuild project and determines that Licensee's work is not in compliance on two (2) percent or more of the ten (10) percent sample inspected, Verizon New England may perform and bill Licensee for a complete Post-construction Subsequent Inspection of all poles involved in the Rebuild project and will provide Licensee with the results of the inspection in order that the Licensee may bring its facilities into compliance.
  - 3) Verizon New England may revoke Licensee's right to conduct Self Pre-surveys for future Rebuild projects if more than 2% of the 10% pole sample is found to be in non-compliance.
- j) Verizon New England will continue to conduct Post-construction Subsequent Inspections until all of Licensee's facilities as a result of the Rebuild project have been made compliant. Licensee shall pay Verizon New England for the cost of performing all Post-construction Subsequent Inspections. Verizon New England will provide Licensee with the results of the inspections to allow the Licensee to bring its facilities into compliance.
- k) If the results of the Post-construction Inspections show more than 2% of the 10% pole sample inspected results in noncompliance with the aforementioned requirements and specifications, Licensee shall correct such non-conforming condition within thirty (30) days of written notification from Verizon New England. Where Licensee fails to correct the stated non-conforming condition within thirty (30) days, Verizon New England may revoke Licensee's right to perform Rebuild Self Pre-survey and Licensee shall be responsible for any costs associated with correcting such non-conforming conditions.



## LICENSEE SELF-SURVEY FORM

### Definitions

**SUMMARY** – The total number of poles surveyed and the total number of poles requiring Verizon Make Ready

**SURVEYORS:** Name of Representative attending Survey from VERIZON, Power Company and Licensee

**Date of Survey :** Date Survey is performed

**EWO#:** Verizon's Engineering Work Order Number

**Munic:** Municipality where pole is located **State:** State in which pole is located

**Licensee Name:** Name of Company or Entity applying for Pole Attachments

**Exch Code:** Verizon's Exchange Code = the Exchange in which the Municipality is located.

**Munic Code:** In Massachusetts, Verizon's Municipality Code = the Municipality in which the pole is located.

**APP/LIC #:** The number of the Licensee's License or License Application = sequentially numbered by municipality.

**ELCO NAME:** The name of the Electric (power) Company in whose service area the pole is located.

**Location:** **Street, Route, Circuit # and other information which indicates location of poles.**  
(1) Indicate location by providing name of street, highway, route, etc., e.g., South Street, north of (N/O) Jones Road. Private Property Poles should be identified as such e.g., P.P. (Lead off pole 1234 South).

**Pole #:** Tel = Telephone Company El= Electric Company

**ATT:** **Type of Attachment:** F = Fiber C= Copper or Coaxial P.S. = Power Supply Riser = Riser Pole

**Ownership:** JO=Joint Owned 50%-50% Tel-Elco, JU = **Joint Use** - 100% Tel or 100% Elco, FO = 100% Fully owned by Tel or Elco (Other company not on pole)

**Charge:** Y or N = Y = Yes, there are make ready charges, N = No, there are no make ready charges to the Applicant.

**Work Description:** Short description of work operations required.

**Task #** should also be included and is defined as the number of the task or tasks required for make ready work. The Task # is associated with a Unit Price from the "Make Ready Unit Price Schedule" included in each of the new Pole Attachment Agreements.

Revised 12/13/01

## APPENDIX VI

ISSUE 10 – December 13, 2001

### Procedure for Placing an Additional Licensee's Cable on Same Licensee's Previously Licensed Aerial Pole Attachments (Commonly Known as Overlash)

#### 1 – SCOPE

In the process of upgrading cable plant capacity, it may be necessary for the Licensee to augment the number of its cables and equipment lashed or attached to its existing strand.

#### 2 - DEFINITIONS

- a) **Overlash** – The act of attaching any single strand, hardware, cable, wires and/or apparatus owned by Licensee to same Licensee's existing strand, hardware, cable, wires and/or apparatus.
- b) **Post-construction Inspection** - A Verizon New England Inc inspection of the poles after completion of Licensee's Overlash project at its own cost except that Licensee shall pay Verizon New England Inc for the inspection of those poles found not in compliance as a result of the Inspection
- c) **Post-construction Subsequent Inspection** – An inspection, subsequent to the Post-construction Inspection, required as the result of finding poles in non-compliance after the Post-construction Inspection performed by Verizon New England Inc. Licensee shall prepay Verizon New England Inc for the Post-construction Subsequent Inspection based on the Unit Pricing Schedule.
- d) **Self Pre-survey** – The performance of a field review by a Licensee to survey the routing of a proposed path where additional overlashed cable facilities are planned, to determine if any Make-ready Work is required. The Licensee shall adhere to all requirements of the most recent edition of the National Electrical Safety Code (NESC) and the "Manual of Construction Procedures" (Blue Book), published by Telcordia Technologies Inc.. This survey is performed without the presence of a Verizon New England Inc representative and the results of the Self Pre-survey shall be provided to the Verizon New England Inc Reimbursable Construction Engineer (RCE) with documentation of any Subsequent Make-ready Work required before Licensee begins construction of the Overlash project.
- e) **Subsequent Make-ready Work** – Rearrangement of Verizon New England Inc facilities by Verizon New England Inc as determined by the Licensee's Self Pre-survey to provide for clearance and separation requirements for all

pole attachments relative to the latest edition of the Telcordia Blue Book and the latest edition of the NESC.

- f) **Charges** – Verizon New England Inc 's costs in the Unit Pricing Schedule, based on current Verizon New England Inc unit pricing methodology.

### **3 – SPECIFICATIONS**

Licensee shall conform to the terms and conditions contained within the Specifications Section of the most current Pole Attachment Agreement, including:

**The National Electrical Safety Code (NESC)**

Part 2 Section 26-261K2 Strength Requirements.

Part 2 Section 25-250 Loading Requirements

**“Manual of Construction Procedures” (Blue Book), published by Telcordia Technologies Inc.**

Section 4.2 Table 4 – 1 and Note 2

Section 3 Clearances

### **4 - NOTIFICATION**

- a) Licensee shall provide 5 days advance notice in writing to the Verizon New England Inc RCE prior to their Overlash work being started and coordinate its Overlash work with the local Verizon New England Inc RCE and construction coordinator to avoid any scheduling conflicts with any Verizon New England Inc construction or maintenance work.
- b) Licensee shall submit written notification (Form 8) within thirty (30) days to the Verizon New England Inc RCE after their Overlash work has been completed, to enable the Verizon New England Inc RCE to facilitate the post-construction inspection.

### **5 – PROCEDURES**

- a) Licensee shall perform a Self Pre-survey of all routes where it proposes to Overlash cable to its existing licensed facility and provide written results to the Verizon New England Inc RCE.
- b) Licensee will submit a written request (Form 8) to Verizon New England Inc RCE to arrange for a Pre-construction Survey of all locations where Licensee has determined Subsequent Make-ready Work is necessary by Verizon New England Inc to accommodate Licensee's proposed work. Licensee will issue Verizon New England Inc an advance check to cover the applicable charges for the Pre-construction Survey.
- c) Verizon New England Inc RCE will notify the Licensee of the applicable charges for any type of Make-ready Work. Verizon New England Inc RCE will provide the Licensee with an associated work schedule and estimated construction completion date for the Make-ready Work.
- d) Prior to Verizon New England Inc RCE initiating Make-ready Work, Licensee will forward a check to Verizon New England Inc RCE covering Subsequent Make-ready Work charges.

- e) Licensee may proceed to place the overlashed cable in sections of aerial facilities requiring no Make-ready Work. Licensee may proceed to place the overlashed cable in sections of aerial facilities requiring Make-ready Work when all parties affected concur that a non-compliance will either be corrected by the Licensee concurrently with the Overlash project, or by any other attacher, Joint Owner or Joint User after the Overlash project has been completed.
- f) Verizon New England Inc may perform a Post-construction Inspection of the poles included in the Licensee's Overlash project..
  - 1) If Verizon New England Inc performs a Post-construction Inspection of the poles involved in the Licensee's Overlash project and all work is in compliance with the requirements and specifications, the cost of the inspection will be borne by Verizon New England Inc and no further Post-construction Inspection will be required.
  - 2) If Verizon New England Inc performs the Post-construction Inspection of the poles involved in the Licensee's Overlash project and determines that Licensee's work is not in compliance, Licensee will pay Verizon New England Inc for the inspection of those poles found in noncompliance. In addition, Verizon New England Inc may perform and Licensee will prepay for the Post-construction Subsequent Inspection of those poles found to be in noncompliance in order to ensure that the Licensee has brought its facilities into compliance.
- g) Verizon New England Inc may continue to conduct Post-construction Subsequent Inspections until all of Licensee's facilities as a result of the Overlash project have been made compliant. Licensee shall prepay Verizon New England Inc for the cost of performing all Post-construction Subsequent Inspections. Verizon New England Inc RCE will provide Licensee with the results of the inspections to allow the Licensee to bring its facilities into compliance.
- h) If the results of the Post-construction Inspections show results that are in non-compliance with the aforementioned requirements and specifications, Licensee shall correct such non-conforming condition within thirty (30) days of written notification from Verizon New England Inc RCE. Where Licensee fails to correct the stated non-compliant condition within thirty (30) days, Verizon New England Inc may revoke Licensee's right to perform Overlash Self Pre-survey and Licensee shall be responsible for any costs associated with correcting such non-compliant conditions.

**LICENSEE SELF-SURVEY FORM  
APPENDIX IV - FORM 5**

**To be used for Overlash/Rebuild/Power Supplies**

Summary = Total Poles Surveyed \_\_\_\_\_ Total Poles Requiring Verizon Make-Ready \_\_\_\_\_

FIELD SURVEY / MAKE READY WORK FORM															
<b>SURVEYORS:</b>				<b>DATE OF SURVEY:</b>				EWO #:							
Verizon				<b>MUNIC:</b>		<b>STATE:</b>		Exch Code:		Munic Code:					
<b>Licensee</b>				<b>LICENSEE NAME:</b>				<b>APP/LIC #:</b>							
<b>ELCO</b>				<b>ELCO NAME:</b>				<b>PAGE</b> ____ <b>OF</b> ____							
<b>LOCATION</b>		<b>POLE #</b>		<b>ATT</b>	<b>OWNERSHIP</b>						<b>CHARGE</b>		<b>WORK DESCRIPTION</b>		
<b>TEL RTE / STREET NAME</b>		<b>Tel</b>	<b>El</b>	<b>F/C</b>	<b>J.O.</b>		<b>J.U.</b>		<b>F.O.</b>		<b>YES</b>	<b>NO</b>	<b>TASK #S / REMARKS</b>		<b>* Height of Att.</b>
				<b>P.S. Riser</b>	<b>Tel</b>	<b>El</b>	<b>Tel</b>	<b>El</b>	<b>Tel</b>	<b>El</b>					*
															*
															*
															*
															*
															*
<b>TOTALS:</b>															

- Height of Attachment = Height of Licensee Attachment shall be 40" below Elco MGN unless otherwise noted here by Verizon and Elco surveyor.
- Licensee to complete bold italicized areas only. ( Provide ownership information if known)



Issued - December 11, 2001

## APPENDIX VII

### Procedure for Obtaining an Attachment License for the Installation of Power Supplies

#### 1 - SCOPE

In the process of providing or upgrading service, it may be necessary for a Licensee to place power supplies requiring a Pole Attachment License.

#### 2 – DEFINITIONS

- a) **Power Supply** – Any of Licensee’s facilities in direct contact with or supported by a utility pole including a piece of equipment, cabinet, or associated apparatus for the purpose of providing power for Licensee’s facilities, with the exception of any cable attachments.
- b) **Self Pre-survey** - The performance of a field review by a Licensee to survey the pole locations where proposed Power supplies are planned to determine if any Make-ready Work is required. The Licensee shall adhere to all requirements of the most recent edition of the National Electrical Safety Code (NESC) and the “Manual of Construction Procedures” (Blue Book), published by Telcordia Technologies Inc.. This survey is performed without the presence of a Verizon New England Inc. representative and the results of the Self Pre-survey shall be provided to the Verizon New England Inc. License Administration Group (LAG) with documentation of any Make-ready Work required before Licensee begins any work relative to placement of the Power Supply.

#### 3 – SPECIFICATIONS

Licensee shall conform to the terms and conditions contained within the Specifications Section of the most current Pole Attachment Agreement, including:

**The National Electrical Safety Code (NESC)**

**“Manual of Construction Procedures” (Blue Book), published by  
Telcordia Technologies Inc. - Section 13**

#### 4 – APPLICATION

Licensee shall provide Verizon New England Inc. with a completed Pole Attachment License Application for all pole locations where it proposes to make its Power Supply attachments. Licensee shall also include a completed Licensee Power Supply Schematic - Form 10 for each pole location on its License Application. In addition, the Licensee shall provide the following information:

- a) An approved Power Company Power Supply installation diagram and associated specifications must be included if not already on file with Verizon New England Inc.'s Reimbursable Construction Engineer (RCE). Verizon

New England Inc.'s RCEs will retain this master copy for each individual power company.

Licensee is responsible for updating this information as installation diagrams and specifications change.

- b) If pole Make-ready Work is required, Licensee shall submit a separate application listing those locations in need of Make-ready Work, along with a check to Verizon New England to cover the cost of a field survey using the unit cost pricing schedule.
- c) Licensee shall not place any Power Supply until Licensee has received a Pole Attachment License for the pole location identified in the Application for the Pole Attachment License.

## **5 – PROCEDURE**

The following procedure shall be followed when Licensees perform Self Pre-surveys for Power Supplies:

- a) Licensee shall perform a Self Pre-survey of all poles where it proposes to place Power Supplies.
- b) Licensee shall submit a Pole Attachment License Application consisting of Form 1, Form 5, and Form 10 for those poles where no Make-ready Work is required to place a Power Supply as a result of the Self Pre-survey. Verizon New England LAG will then issue the Pole Attachment License for the Licensee's Power Supply.
- c) Licensee shall submit a Pole Attachment License Application consisting of Form 1, Form 2, Form 4, Form 5 and Form 10 to Verizon New England Inc.'s LAG to arrange for a Pre-construction Survey of all locations where Licensee has determined Make-ready Work is required by Verizon New England as a result of the Self Pre-survey to accommodate Licensee's proposed work.
  - 1) Licensee will issue an advance check to the Verizon New England LAG to cover the applicable charges for the Pre-construction Survey.
  - 2) Upon receipt of the check for the Pre-construction Survey the Verizon New England RCE will contact the power company and the Licensee to arrange a date for a field survey. The survey will be performed to determine the scope of Make-ready Work necessary to provide the required clearances for the Licensee's Power Supply.
  - 3) Upon completion of the field survey, Verizon New England LAG shall notify the Licensee via Form 4 of any Make-ready Work charges. The Licensee shall submit to the LAG an advance check and a signed Form 4 prior to Verizon New England Inc. commencing any Make-ready Work.
  - 4) Upon receipt of the check for the Make-ready Work the Verizon New England LAG will provide the Licensee with an associated work schedule and estimated construction completion date for the Make-ready Work.
  - 5) Once all required Make-ready Work has been completed, Verizon New England LAG will then issue the Pole Attachment License for the Licensee's Power Supply.

- d) Licensee shall submit written notification (Form 8) within 30 (thirty) days to Verizon New England Inc. RCE after their Power Supply attachments have been completed.
- e) Verizon New England may perform a Post-construction Inspection of the poles included in the Licensee's Power Supply project within 90 (ninety) days of receipt of Form 8. Upon Receipt of Form 9 PCI and RCETEMP4, Licensee shall pre-pay Verizon New England for the Post-construction Inspection.
  - 1) If Verizon New England performs a Post-construction Inspection and all work is in compliance with the requirements and specifications, no further inspection will be required. Verizon will provide the Licensee with the results of the inspection (Form 5 and Form 9 PCI) within 30 (thirty) days.
  - 2) If Verizon New England Inc. performs the Post-construction Inspection and determines that any of Licensee's Power Supply work is not in compliance with Section 3 Specifications, Verizon New England Inc. will provide Licensee with the results of the inspection via Form 11 and Form 9 SI within 30 (thirty) days in order that the Licensee may bring its facilities into compliance.
  - 3) Verizon New England Inc. will continue to conduct Post Construction Subsequent Inspections until all of Licensee's facilities as a result of the Power Supply project have been made compliant. Licensee shall prepay Verizon New England for the cost of performing all Subsequent Inspections. If the results of the Post Construction Subsequent Inspections show results that are in non-compliance with the requirements and specifications, Licensee shall correct such non-conforming condition within 30 (thirty) days of written notification from Verizon New England Inc. RCE. Verizon New England Inc. RCE will provide Licensee with the results of the Subsequent Inspections via Form 11 and Form 9 SI to allow the Licensee to bring its facilities into compliance.
- f) Licensee shall correct any non-conforming condition within thirty (30) days of written notification from Verizon New England. Where Licensee fails to correct stated non-conforming condition within thirty (30) days, Verizon New England may revoke Licensee's future right to perform Self Pre-survey of Power Supplies. Licensee shall be responsible for any costs associated with correcting such non-conforming conditions.
- g) If at anytime in the future, following the attachment of a Power Supply, Verizon New England requests the Licensee to either reconfigure its equipment, or locate to a new pole, the Licensee agrees to perform this work within thirty (30) days of any such request at the Licensee's expense.
- h) No Power Supply construction shall take place on any pole requiring Make-ready Work until any such work has been paid for in advance, completed by Verizon New England, and the Licensee has been notified of its completion by Verizon New England.

- i) If a Power supply is placed before a license is issued, its presence shall be considered as unauthorized and charges shall be as specified for unauthorized attachments in ARTICLE IX – UNAUTHORIZED ATTACHMENTS in the POLE ATTACHMENT AGREEMENT.

**LICENSEE SELF-SURVEY FORM  
APPENDIX IV - FORM 5**

**To be used for Overlash/Rebuild/Power Supplies**

Summary = Total Poles Surveyed \_\_\_\_\_ Total Poles Requiring Verizon Make-Ready \_\_\_\_\_

FIELD SURVEY / MAKE READY WORK FORM														
<b>SURVEYORS:</b>				<b>DATE OF SURVEY:</b>				<b>EWO #:</b>						
Verizon				<b>MUNIC:</b>		<b>STATE:</b>		Exch Code:		Munic Code:				
<b>Licensee</b>				<b>LICENSEE NAME:</b>				<b>APP/LIC #:</b>						
<b>ELCO</b>				<b>ELCO NAME:</b>				<b>PAGE ____ OF ____</b>						
LOCATION		POLE #		ATT	OWNERSHIP						CHARGE		WORK DESCRIPTION	
TEL RTE / STREET NAME		Tel	El	F/C	J.O.		J.U.		F.O.		YES	NO	TASK #S /	* Height of Att.
				P.S. Riser	Tel	El	Tel	El	Tel	El			REMARKS	
														*
														*
														*
														*
														*
<i>TOTALS:</i>														

- Height of Attachment = Height of Licensee Attachment shall be 40" below Elco MGN unless otherwise noted here by Verizon and Elco surveyor.
- Licensee to complete bold italicized areas only. ( Provide ownership information if known)

## LICENSEE SELF-SURVEY FORM

### Definitions

**SUMMARY** – The total number of poles surveyed and the total number of poles requiring Verizon Make Ready

**SURVEYORS:** Name of Representative attending Survey from VERIZON, Power Company and Licensee

**Date of Survey :** Date Survey is performed

**EWO#:** Verizon's Engineering Work Order Number

**Munic:** Municipality where pole is located **State:** State in which pole is located

**Licensee Name:** Name of Company or Entity applying for Pole Attachments

**Exch Code:** Verizon's Exchange Code = the Exchange in which the Municipality is located.

**Munic Code:** In Massachusetts, Verizon's Municipality Code = the Municipality in which the pole is located.

**APP/LIC #:** The number of the Licensee's License or License Application = sequentially numbered by municipality.

**ELCO NAME:** The name of the Electric (power) Company in whose service area the pole is located.

**Location:** **Street, Route, Circuit # and other information which indicates location of poles.**  
(1) Indicate location by providing name of street, highway, route, etc., e.g., South Street, north of (N/O) Jones Road. Private Property Poles should be identified as such e.g., P.P. (Lead off pole 1234 South).

**Pole #:** Tel = Telephone Company El = Electric Company

**ATT:** **Type of Attachment:** F = Fiber C = Copper or Coaxial P.S. = Power Supply Riser = Riser Pole

**Ownership:** JO=Joint Owned 50%-50% Tel-Elco, JU = Joint Use - 100% Tel or 100% Elco, FO = 100% Fully owned by Tel or Elco (Other company not on pole)

**Charge:** Y or N = Y = Yes, there are make ready charges, N = No, there are no make ready charges to the Applicant.

**Work Description:** Short description of work operations required.

**Task # should also be included and is defined as the number of the task or tasks required for make ready work. The Task # is associated with a Unit Price from the "Make Ready Unit Price Schedule" included in each of the new Pole Attachment Agreements.**

Revised 12/12/01

## **APPENDIX VIII**

### **Job Aid For Requests To Records**

In an effort to maintain consistency associated with requests from outside VERIZON NEW ENGLAND INC. for the viewing or securing of Conduit Plats this job aid is being prepared.

#### **REQUESTS**

The process begins with the request from the customer to the RCE (Reimbursable Construction Engineer), which may be directed to the Design Administrator Group for the specific area where the request is made.

The request must be submitted in writing, indicating what the customer requires (usually a map which has been highlighted or a listing of streets, etc. is supplied by the customer) along with a reason for the request.

Verizon New England Inc. will make the conduit records available within a reasonable time frame (normally five day turn around) upon receipt of the **written request**, for the specific areas mentioned in the letter. As VERIZON NEW ENGLAND INC. does not maintain all plats it may be necessary to secure the specific drawings from our vendors and the customer should be informed of any delay this may cause.

#### **CHARGES & BILLING**

The Design Administrator, if involved, will secure a Keep Cost Number from the area Reimbursable Construction Engineer for each new customer request or for each municipality which is submitted for conduit plats when it is determined the requestor is to be charged. When a job number is secured the job can remain open for six months (January through June, July through December) and should be used for subsequent requests from the same customer or municipality.

VERIZON NEW ENGLAND INC. does plan swaps with the Electric Companies when the information required is for electrical purposes. If the customer is a municipality – there is no charge. These types of requests however must still follow the written request procedures.

Based on analysis of time and material it has been determined a charge of \$7.50 per plat with a minimum charge of \$25.00 is to be used in determining costs.

Up-front payment is required before distribution of any plats.

All checks should be made out to VERIZON NEW ENGLAND INC..

The Design Administrator or RCE will forward any checks to the RPC in Maryland with the advance payment transmittal form. These forms can be secured from the area Reimbursable Construction Engineer.

#### **NON-DISCLOSURE AGREEMENTS**

For each request a signed non-disclosure form is required from someone with authority in the organization making the request. A disclaimer at the end of the non-disclosure agreement is to advise the customer that the information they are getting is for preliminary design purposes only – they still need to do field surveys and measurements.

Revised 6/27/01

On the second page of the non-disclosure there is a space to enter the price being charged.

There are three Non-Disclosure Agreements as follows:

**Non-Disclosure 1** is for use with large controlling entities such as the gas company and electric, MBTA, etc. Use the term plan swap in place of the monetary issue.

**Non-Disclosure 2** is for anyone other than those mentioned in 1 and 3 such as licensees, surveyors, engineering firms, etc.

**Non-Disclosure 3** is for municipalities.

If there is more than one recipient for the request, please add more RECIPIENTS to the bottom of the non-disclosure so that all involved can sign.

No signature – No records

### **PROPRIETARY INFORMATION**

Normally conduit plats do not contain information that is considered proprietary therefore scrubbing (removal) is not required.

### **STAMPING OF PLATS**

Plats should be stamped indicating “This record is for preliminary design purposes only and does not preclude the need for field survey and measurement.” These stamps have been provided to the various Design Administrator and RCE groups.

### **RELEASE OF INFORMATION**

When payment has been received and the non-disclosure agreement signed, the customer may pick-up the requested plats or they can be mailed, based on the customer’s preference. The customer also has the option of viewing the plats at our location, following all the steps mentioned previously (written request, up-front payment, signed non-disclosure), which has been the case chosen by some customers.

### **INTERNAL REQUIREMENT**

The Reimbursable Construction Engineer should also be provided copy of all non-disclosure agreements and copies of the advance payment transmittal to retain with the job. These details are required for job closing

The Reimbursable Construction Engineer remains available to assist the Design Administrator in following this procedure.

**Utilization of the CONDUIT PLAT REQUEST LOG is mandatory for tracking the details associated with these requests for records and must be maintained for Regulatory purposes.**

Revised 6/27/01

### **Pole Record Requests**

Access to pole records are not normally received from customers as these structures can be accessed visually however, in the event requests, in writing, for access to pole records is received the RCE will direct the customer to the Design Administrator for the specific area.

A printout of the Pole Record System (PRS) for the specific location would be retrieved; removal of any proprietary information may be required.

The customer would be required to submit payment for the time required accessing and producing the documents (time and material costs). Upon receipt of the check the documents would be given to the customer. No non-disclosure document would be required, as these structures are visible to the public at large.

### **Right Of Way Requests**

Right Of Way documents are a matter of public record and can be obtained from the various State and Municipal Offices such as City / Town Halls, Registry of Deeds, etc.

However, in the event requests are received, in writing, for Right of Way documents by customers the RCE would direct the requesting party to the appropriate Right Of Way Engineer for the area in question.

The customer would be required to submit payment for the time required by the Right Of Way Engineer to locate and produce the documents being requested (time and material costs). Upon receipt of the check the documents would be given to the customer. No non-disclosure sign-off would be necessary, as these documents are available to the public.



185 Franklin Street, Room 503  
Boston, MA 02110

February 6, 2004

Mr. Gary Winslow  
TIME WARNER ENTERTAINMENT CO., L.P.  
11 Eagle Ct.  
Keene, NH 03431

Dear Gary:

Enclosed is a fully executed aerial license agreement between TIME WARNER ENTERTAINMENT CO., L.P., Public Service Company of New Hampshire and Verizon New England Inc., covering the State of New Hampshire.

TIME WARNER ENTERTAINMENT CO., L.P. must have a fully executed license agreement and signed license application from both Verizon New England Inc., and the Power Company, if applicable, before any attachments can be made to the poles.

**When submitting application forms, in order to obtain a license, reference may be made to the following:**

The procedure for obtaining a pole attachment license is contained in Articles IV and V of the agreement. The application forms are located in Appendix IV of the agreement. Please complete the application forms and submit them to Verizon, along with the field survey check, and to the appropriate power company, if applicable.

Within 45 days of receipt of a complete license application and the correct survey fee payment, Licensor shall perform or have performed a pre-construction survey and present you with the survey results. If no make-ready is required, a license shall be issued for the attachment.

If the Licensor determines that the pole or anchor to which Licensee desires to make attachments is inadequate or otherwise needs rearrangement of the existing facilities thereon to accommodate the Licensee's Facilities, in accordance with the specifications set forth in Article VI, Licensor will provide Licensee with an itemized invoice for such anticipated Make-ready Work. The Make-ready Work will be performed following receipt by Licensor of advance payment. Upon receipt of the advance payment, Licensor will provide the Licensee with the estimated start and estimated construction completion date of the Make-ready Work.

Verizon shall make every reasonable effort to complete Make-ready Work within six (6) months of receipt of payment for Make-ready Work from Licensee, except for reasons beyond our control.

Upon completion of the make ready work, you will receive a signed license application and pole attachment license from Verizon. You are responsible for obtaining permission from any Joint Owner(s) or Joint User(s) of the pole before making any attachments(s). It is your responsibility

VERIZON NEW ENGLAND INC.

10/15/03

to obtain any public and or private approvals to construct, operate and or maintain your facilities on public and/or private property. Your receipt of these forms is the final approval you will need to attach to the utility poles. Attachment prior to procuring the signed license is considered to be unauthorized and illegal.

If you have any questions regarding your license application, please call 1-800-641-2299.

If you have any other questions, please contact me at 617-743-5724.

Sincerely,

  
Patricia Mazzacone - Specialist

Enclosure

STATE CABLE TV CORP.

159428 NH  
Cost Ctr: 356 \$16,468.79  
Northeast Utilities (Public Service Co

AERIAL LICENSE AGREEMENT

DATED October 27, 1998

~~NE 2596~~

BETWEEN

15949

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY  
d/b/a BELL ATLANTIC-NEW ENGLAND  
(LICENSOR)

NE 2596

AND

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE  
(LICENSOR)

NE 2436

AND

CONTOOCCOOK VALLEY TELEPHONE COMPANY, INC.  
(LICENSOR)

NE 2449

AND

STATE CABLE TV CORPORATION  
(LICENSEE)

LD.949

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LICENSE AGREEMENT

THIS AGREEMENT, made this 27th day of October, 1998, by and between Public Service Company of New Hampshire, a public utility corporation organized and existing under the laws of the State of New Hampshire, having its principal office in the City of Manchester, New Hampshire, Contoocook Valley Telephone Company, Inc., a corporation organized and existing under the laws of the State of New Hampshire, having its principal office in the Town of Contoocook, New Hampshire and New England Telephone and Telegraph Company d/b/a Bell Atlantic-New England, a corporation organized and existing under the laws of the State of New York, having its principal office in the City of Boston, Massachusetts (hereinafter referred to as the "Licensor") and State Cable TV Corporation, a corporation organized and existing under the laws of the State of Delaware, having its principal office in the City of Augusta, Maine, (hereinafter called the "Licensee").

WITNESSETH

WHEREAS, Licensee proposes to furnish communications services in the Town of Tuftonboro, in the State of New Hampshire; and

WHEREAS, Licensee will need to place and maintain attachments within the area described above and desires to place such attachments on poles of Licensor; which poles are either jointly or solely owned by the Licensors; and

WHEREAS, Licensor is willing to permit, to the extent they may lawfully do so, the placement of said attachments on Licensor's facilities where reasonably available and where such use will not interfere with Licensor's service requirements or the use of its facilities by others subject to the terms of this agreement;

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

ARTICLE I

DEFINITIONS

As Used in This Agreement

A) Anchor Rod

A metal rod connected to an anchor and to which a guy strand is attached. Also known as a "guy rod".

B) Attachment

Any single strand, hardware, cable, wires and/or apparatus attached to a pole and owned by the Licensee.

C) Guy Strand

A metal cable of high tensile strength which is attached to a pole and anchor rod (or another pole) for the purpose of reducing pole stress.

D) Joint Owner

A person, firm or corporation having an ownership interest in a pole and/or anchor rod with Licensor.

E) Make-Ready Work

The work required (rearrangement and/or transfer of existing facilities on a pole, replacement of pole or any other changes) to accommodate the Licensee's attachments on Licensor's pole.

F) Field Survey Work or Survey Work

A survey of the poles on which Licensee wishes to attach in order to determine what work, if any, is required to make the pole ready to accommodate the required attachment, and to provide the basis for estimating the cost of this work.

G) Other Licensee

Any entity, other than Licensee herein or a joint user, to whom Licensor has or hereafter shall extend the privilege of attaching communications facilities to Licensor's poles.

H) Joint User

A party with whom Licensor has entered into, or may hereafter enter into, a written agreement covering the rights and obligations of the parties thereto with respect to the use of poles and anchor rods owned by each party.

I) Suspension Strand

A metal cable of high tensile strength attached to pole and used to support communications facilities. Also known as "Messenger Cable".

J) Identification Tags

Identification tags are used to identify Licensee's plant. Identification tags shall be made of polyethylene and polyvinyl chloride with ultraviolet inhibitors. The two types of Identification tags are cable and apparatus tags as described in Appendix III, Form G.

Article II

SCOPE OF AGREEMENT

- (A) Subject to the provisions of this Agreement, Licensor agrees to issue to Licensee for any lawful communications purpose, revocable, nonexclusive licenses authorizing the attachment of Licensee's attachments to Licensor's poles within that portion of the Town of Tuftonboro, New Hampshire in which Licensor provides service.
- (B) No use, however extended, of Licensor's poles or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in such poles. Licensee's rights herein shall be and remain a license. Neither this Agreement nor any license granted hereunder shall constitute an assignment of any of Licensor's rights to use the public or private property at the location of Licensor's poles.
- (C) Nothing contained in this Agreement shall be construed to compel Licensor to construct, retain, extend, place or maintain any pole, or other facilities not needed for Licensor's own service requirements.
- (D) Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against Licensor with respect to any agreement(s) and arrangement(s) which Licensor has heretofore entered into, or may in the future enter into with others not parties to this Agreement regarding the poles covered by this Agreement. The rights of Licensee shall at all times be subject to any such existing agreement(s) or arrangement(s) between Licensor and any joint owner(s) or joint user(s) of Licensor's poles.

ARTICLE III

FEES AND CHARGES

- (A) Licensee agrees to pay to Licensor the fees and charges as specified in and in accordance with the terms and conditions of APPENDIX I, attached hereto and made a part hereof.
- (B) Nonpayment of any amount due under this Agreement shall constitute a default of this Agreement.
- (C) Licensee shall furnish bond or other satisfactory evidence of financial security in such form (Appendix III Form F hereto attached) and amount as Licensor from time to time may require, in an initial amount of \$ -0- , but not exceeding \$50,000.00, to guarantee the payment of any sums which may become due to Licensor for fees due hereunder or charges for work performed for the benefit of Licensee under this Agreement, including the removal of Licensee's attachments upon termination of this Agreement or upon termination of any License issued hereunder. The financial security requirement may be waived in writing by Licensor or either of them and reinstated if waived.

- (D) The Licensor may change the amount of fees and charges specified in APPENDIX I by giving the Licensee not less than sixty (60) days' written notice prior to the date the change is to become effective. Notwithstanding any other provision of this Agreement, Licensee may terminate this Agreement at the end of such sixty-day notice period if the change in fees and charges is not acceptable to Licensee; provided Licensee gives Licensor written notice of its election to terminate this Agreement at least thirty (30) days prior to the end of such sixty-day period.
- (E) Changes or amendments to APPENDIX I shall be effected by the separate execution of APPENDIX I as so notified. The separately executed APPENDIX I shall become a part of and be governed by the terms and conditions of this Agreement. Such changes or amendments shall become effective within sixty (60) days and shall be presumed acceptable unless within that period Licensee advises Licensor in writing that the changes and amendments are unacceptable and, in addition, within thirty (30) days thereafter submits the issue to the regulatory body asserting jurisdiction over this agreement for decision.

#### ARTICLE IV

##### ADVANCE PAYMENT

- (A) Licensee shall make an advance payment to the Licensor prior to:
  - (1) any undertaking by Licensor of the required field survey [See Article VIII para. (A)] in an amount specified by Licensor sufficient to cover the estimated cost to be incurred by Licensor to complete such survey.
  - (2) any performance by Licensor of any make-ready work required in an amount specified by Licensor sufficient to cover the estimated cost to be incurred by Licensor to complete the required make-ready work.
- (B) The amount of the advance payment required will be credited against the full cost to Licensor for performing such work or having such work performed by others plus, unless waived by Licensor or either of them, an amount equal to ten (10%) percent of Licensor's full cost.
- (C) Where the advance payment made by Licensee to Licensor for field survey or make-ready work is less than the full cost to Licensor for such work, Licensee agrees to pay Licensor all sums due in excess of the amount of the advance payment.
- (D) Where the advance payment made by Licensee to Licensor for field survey or make-ready work exceeds the full cost to Licensor for such work, Licensor shall refund the difference to Licensee.

ARTICLE V

SPECIFICATIONS

- (A) Licensee's attachments shall be placed and maintained in accordance with the requirements and specifications of the latest editions of the Manual of Construction Procedures (Blue Book), Electric Company Standards, the National Electrical Code (NEC), the National Electrical Safety Code (NESC) and rules and regulations of the Occupational Safety and Health Act (OSHA) or any governing authority having jurisdiction over the subject matter. Where a difference in specifications may exist, the more stringent shall apply.
- (B) If any part of Licensee's attachments is not so placed and maintained, Licensor may upon ten (10) days written notice to Licensee and in addition to any other remedies Licensor may have hereunder, remove Licensee's attachments from any or all of the Licensor's poles or perform such other work and take such other action in connection with said attachments that Licensor deems necessary or advisable to provide for the safety of Licensor's employees or performance of Licensor's service obligations at the cost and expense to Licensee and without any liability therefor; provided, however, that when in the sole judgement of Licensor such a condition may endanger the safety of Licensor's employees or interfere with the performance of Licensor's service obligations, Licensor may take such action without prior notice to Licensee.
- (C) As described in Appendix III, Form G, Licensee shall place Identification cable tags on cables located on poles and Identification Apparatus tags on any associated items of Licensee's Plant, e.g., guys, anchors or terminals. The Telephone Company, in its sole determination, has the right to approve all identification tags that are different than those described in Appendix III, Form G.

ARTICLE VI

LEGAL REQUIREMENTS

- (A) Licensee shall be responsible for obtaining from the appropriate public and/or private authority any required authorization to construct, operate and/or maintain its attachment on public and private property at the location of Licensor's poles which Licensee uses and shall submit to Licensor evidence of such authority before making attachments on such public and/or private property.
- (B) The applicable provisions in the attachment entitled "Non-Discrimination Compliance Agreement" shall form a part of this agreement and any amendments thereto. (Attachment A)
- (C) The parties hereto shall at all times observe and comply with, and the provisions of the Agreement are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties hereto under this Agreement, so long as such laws, ordinances or regulations remain in effect.

- (D) No license granted under this Agreement shall extend to any of Licensor's poles where the placement of Licensee's attachments would result in a forfeiture of the rights of Licensor or joint users to occupy the property on which such poles are located. If placement of Licensee's attachments would result in a forfeiture of the rights of Licensor or joint users, or both, to occupy such property, Licensee agrees to remove its attachments forthwith; and Licensee agrees to pay Licensor or joint users, or both, all losses, damages, and costs incurred as a result thereof.

## ARTICLE VII

### ISSUANCE OF LICENSES

- (A) Before Licensee shall attach to any pole, Licensee shall make application for and have received a license therefor in the form of APPENDIX III, Forms A-1 and A-2.
- (B) Licensee agrees to limit the filing of applications for pole attachment licenses to include not more than 200 poles on any one application and 2,000 poles on all applications which are pending approval by Licensor at any one time. Such limitations will apply to Licensor's poles located within a single plant construction district of Licensor. Licensee further agrees to designate a desired priority of completion of the field survey and make-ready work for each application relative to all other of its applications on file with Licensor at the same time.

## ARTICLE VIII

### POLE MAKE-READY WORK

- (A) A field survey will be required for each pole for which attachment is requested to determine the adequacy of the pole to accommodate Licensee's attachments. The field survey will be performed jointly by representatives of Licensor, joint owner and/or joint user and Licensee.
- (B) Licensor reserves the right to refuse to grant a license for attachment to a pole when Licensor determines that the communications space on such pole is required for its exclusive use or that the pole may not reasonably be rearranged or replaced to accommodate Licensee's attachments.
- (C) In the event Licensor determines that a pole to which Licensee desires to make attachments is inadequate or otherwise needs rearrangement of the existing facilities thereon to accommodate the attachments of Licensee in accordance with the specifications set forth in Article V, Licensor will indicate on the Authorization for Pole Make-Ready Work (Appendix III, Form B2) the estimated cost of the required make-ready work and return it to Licensee.

- (D) Any required make-ready work will be performed following receipt by Licensor of completed Form B2. Licensee shall pay Licensor for all make-ready work completed in accordance with the provisions of APPENDIX I, and shall also reimburse the owner(s) of other facilities attached to said poles for any expense incurred by it or them in transferring or rearranging such facilities to accommodate Licensee's pole attachments. Licensee shall not be entitled to reimbursement of any amounts paid to Licensor for pole replacements or for rearrangement of attachments on Licensor's poles by reason of the use by the Licensor or other authorized user(s) of any additional space resulting from such replacement or rearrangement.
- (E) Should Licensor, or another party with whom it has a joint use agreement, for its own service requirements, need to attach additional facilities to any of Licensor's poles, to which Licensee is attached, Licensee will either rearrange its attachments on the pole or transfer them to a replacement pole as determined by Licensor so that the additional facilities of Licensor or joint user may be attached. The rearrangement or transfer of Licensee's attachments will be made at Licensee's sole expense. If Licensee does not rearrange or transfer its attachments within fifteen (15) days after receipt of written notice from Licensor requesting such rearrangement or transfer, Licensor or joint user may perform or have performed such rearrangement or transfer and Licensee agrees to pay the costs thereof.
- (F) Licensor may, when it deems an emergency to exist, rearrange, transfer or remove Licensee's attachments to Licensor's poles, at Licensee's expense, and without any liability on the part of the Licensor for damage or injury to Licensee's attachments.
- (G) License applications received by Licensor from two or more licensees for attachment accommodations on the same pole, prior to the commencement of any field survey or make-ready work required to accommodate any licensee, will be processed by Licensor in accordance with the procedures detailed in APPENDIX II attached hereto.
- (H) In performing all make-ready work to accommodate Licensee's attachments, Licensor will endeavor to include such work in its normal work load schedule.
- (I) Licensee may attach its guy strand to Licensor's existing anchor rod at no charge where Licensor determines that adequate capacity is available; provided that Licensee agrees to secure any necessary right-of-way therefore from the appropriate property owner. Should Licensor, or joint user, if any, for its own service requirements, need to increase its load on the anchor rod to which Licensee's guy is attached, Licensee will either rearrange its guy strand on the anchor rod or transfer it to a replacement anchor as determined by Licensor. The cost of such rearrangement and/or transfer, and the placement of a new or replacing anchor will be at the sole expense of Licensee, which Licensee agrees to pay. If Licensee does not rearrange or transfer its guy strand within fifteen (15) days after receipt of written notice from Licensor regarding such requirement, Licensor or joint user may perform, or have performed, the work involved and Licensee agrees to pay the full costs thereof.

ARTICLE IX

CONSTRUCTION, MAINTENANCE AND REMOVAL OF ATTACHMENTS

- (A) Licensee shall, at its own expense, construct and maintain its attachments on Licensor's poles in a safe condition and in a manner acceptable to Licensor, so as not to conflict with the use of the Licensor's poles by Licensor or by other authorized users of Licensor's poles, nor electrically interfere with Licensor's facilities attached thereon.
- (B) Licensor shall specify the point of attachment on each of Licensor's poles to be occupied by Licensee's attachments. Where multiple licensees' attachments are involved, Licensor will attempt to the extent practical, to designate the same relative position on each pole for each licensee's attachments.
- (C) Licensee shall obtain specific written authorization from Licensor before relocating or replacing its attachments on Licensor's poles.
- (D) All tree trimming made necessary, in the opinion of the Licensors, by reason of the Licensee's proposed attachments at the time of attachment or thereafter, provided the owner(s) of such trees grants permission to the Licensee, shall be performed by contractors approved by Licensors, at the sole cost, expense and direction of the Licensee, except such trimming as may be required on Licensee's customers' premises, to clear Licensee's cable drops, which trimming shall be done by the Licensee at its expense.
- (E) Licensee, at its expense, will remove its attachments from any of Licensor's poles within fifteen (15) days after termination of the license covering such attachments. If Licensee fails to remove its attachments within such fifteen (15) day period, Licensor shall have the right to remove such attachments at Licensee's expense and without any liability on the part of the Licensor for damage or injury to Licensee's attachments.

ARTICLE X

TERMINATION OF LICENSE

- (A) Any license issued under this Agreement shall automatically terminate when Licensee ceases to have authority to construct, operate and/or maintain its attachments on the public or private property at the location of the particular pole covered by the license.
- (B) Licensee may at any time remove its attachments from a pole after first giving Licensor written notice of such removal (APPENDIX III, Form D). Following such removal, no attachment shall again be made to such pole until Licensee shall have first complied with all of the provisions of this Agreement as though no such attachment had previously been made.

ARTICLE XI

INSPECTIONS OF LICENSEE'S ATTACHMENTS

- (A) Licensor reserves the right to make periodic inspections of any part of Licensee's attachments, including guying, attached to Licensor's poles, and Licensee shall reimburse Licensor for the expense of such inspections.
- (B) The frequency and extent of such inspections by Licensor will depend upon Licensee's adherence to the requirements of Articles V and VII herein.
- (C) Licensor will give Licensee advance written notice of such inspections, except in those instances where, in the sole judgement of Licensor, safety considerations justify the need for such an inspection without the delay of waiting until a written notice has been forwarded to Licensee.
- (D) The making of periodic inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation or liability assumed under this Agreement.
- (E) Any charge imposed by Licensor for such inspections shall be in addition to any other sums due and payable by Licensee under this Agreement. No act or failure to act by Licensor with regard to said charge or any unlicensed use by Licensee shall be deemed as a ratification or the licensing of the unlicensed use; and if any license should subsequently be issued, said license shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement or otherwise.

ARTICLE XII

UNAUTHORIZED ATTACHMENTS

- (A) If any of Licensee's attachments shall be found attached to Licensor's poles for which no license is outstanding, Licensor, without prejudice to its other rights or remedies under this Agreement (including termination) or otherwise, may impose a charge and require Licensee to submit in writing, within fifteen (15) days after receipt of written notification from Licensor of the unauthorized attachment, a pole attachment application. If such application is not received by the Licensor within the specified time period, Licensee shall remove its unauthorized attachment within fifteen (15) days of the final date for submitting the required application, or Licensor may remove Licensee's facilities without liability, and the expense of such removal shall be borne by Licensee.
- (B) For the purpose of determining the applicable charge, absent satisfactory evidence to the contrary, the unauthorized pole attachment shall be deemed as having existed since the date of this agreement, and the fees and charges as specified in APPENDIX I, shall be applicable thereto and due and payable forthwith whether or not Licensee is permitted to continue the pole attachment.

ARTICLE XIII

LIABILITY AND DAMAGES

- (A) Licensor reserves to itself, its successors and assigns, the right to locate and maintain its poles and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements. Licensor shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's communications services arising in any manner, except from Licensor's sole negligence, out of the use of Licensor's poles.
- (B) Licensee shall exercise precaution to avoid damaging the facilities of Licensor and of others attached to Licensor's poles, and Licensee assumes all responsibility for any and all loss from such damage caused by Licensee's employees, agents or contractors. Licensee shall make an immediate report to Licensor and any other user of the occurrence of any such damage and agrees to reimburse the respective parties for all costs incurred in making repairs.
- (C) Except, as may be caused by the sole negligence of Licensor, or either of them, Licensee shall defend, indemnify and save harmless Licensor, or either of them, against and from any and all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses arising from or in connection with this Agreement (including reasonable attorneys' fees) including, but not limited to, those which may be imposed upon, incurred by or asserted against Licensor, or either of them by reason of (a) any work or thing done upon the poles licensed hereunder or any part thereof performed by Licensee or any of its agents, contractors, servants, or employees; (b) any use, occupation, condition, operation of said poles or any part thereof by Licensee or any of its agents, contractors, servants, or employees;

(c) any act or omission on the part of Licensee or any of its agents, contractors, servants, or employees, for which Licensor may be found liable; (d) any accident, injury (including death) or damage to any person or property occurring upon said poles or any part thereof arising out of any use thereof by Licensee or any of its agents, contractors, servants, or employees; (e) any failure on the part of Licensee to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement, (f) payments made under any Workers' Compensation Law or under any plan for employees disability and death benefits arising out of any use of the poles by Licensee or any of its agents, contractors, servants, employees or by (g) the erection, maintenance, presence, use, occupancy or removal of Licensee's attachments by Licensee or any of its agents, contractors, servants or employees or by their proximity to the facilities of other parties attached to Licensor's poles.

- (D) Licensee shall indemnify, save harmless and defend Licensor from any and all claims and demands of whatever kind which arise directly or indirectly from the operation of Licensee's attachments, including taxes, special charges by others, claims and demands for damages or loss for infringement of copyright, for libel and slander, for unauthorized use of television broadcast programs, and for unauthorized use of other program material, and from and against all claims and demands for infringement of patents with respect to the manufacture, use and operation of Licensee's attachments in combination with Licensor's poles, or otherwise.

The provisions of this Article shall survive the expiration or earlier termination of this Agreement or any license issued thereunder.

#### ARTICLE XIV

#### INSURANCE

- (A) Licensee shall carry insurance issued by an insurance carrier satisfactory to Licensor to protect the parties hereto from and against any and all claims, demands, actions, judgements, costs, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly from or by reason of such loss, injury or damage as covered in Article XIII preceding.
- (B) The amounts of such insurance, without deductibles:
- (1) against liability due to damage to property shall not be less than \$1,000,000 as to any one occurrence and \$1,000,000 aggregate, and
  - (2) against liability due to injury to or death of persons shall be not less than \$3,000,000.00 as to any one person and \$3,000,000.00 as to any one occurrence.
- (C) Licensee shall also carry such insurance as will protect it from all claims under any Workers' Compensation Law in effect that may be applicable to it.
- (D) All insurance must be effective before Licensor will authorize Licensee to make attachments to any pole and shall remain in force until such attachments have been removed from all such poles.

- (E) Licensee shall submit to Licensor certificates of insurance including renewal thereof shown as Form E of Appendix III hereto annexed, by each company insuring Licensee to the effect that it has insured Licensee for all liabilities of Licensee covered by this Agreement; and that such certificates will name the Licensor as an additional insured under the public liability policy and that it will not cancel or change any such policy of insurance issued to Licensee except after the giving of not less than 30 days' written notice to Licensor.

#### ARTICLE XV

##### AUTHORIZATION NOT EXCLUSIVE

Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to Licensee. Licensor shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any pole covered by this Agreement.

#### ARTICLE XVI

##### ASSIGNMENT OF RIGHTS

- (A) Licensee shall not assign or transfer this Agreement or any authorization granted hereunder, and this Agreement shall not inure to the benefit of Licensee's successors, without the prior written consent of Licensor.
- (B) In the event such consent or consents are granted by Licensor, then this Agreement shall extend to and bind the successors and assigns of the parties hereto.
- (C) Pole space licensed to Licensee hereunder is for Licensee's use only, and Licensee shall not lease, sublicense, share with, convey or resell to others any such space or rights granted hereunder.

#### ARTICLE XVII

##### FAILURE TO ENFORCE

Failure of Licensor to enforce or insist upon compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a general waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

ARTICLE XVIII

TERMINATION OF AGREEMENT

- (A) If Licensee shall fail to comply with any of the terms or conditions of this Agreement or default in any of its obligations under this Agreement, or if Licensee's facilities are maintained or used in violation of any law and Licensee shall fail within thirty (30) days after written notice from Licensor to correct such default or noncompliance. Licensor may at its option forthwith terminate this Agreement and all authorizations granted hereunder, or the authorizations covering the poles as to which such default or noncompliance shall have occurred.
- (B) If an insurance carrier shall at any time notify Licensor that the policy or policies of insurance, required under ARTICLE XIV hereof, will be cancelled or changed so that the requirements of ARTICLE XIV will no longer be satisfied, then this Agreement terminates unless prior to the effective date thereof Licensee shall furnish to Licensor certificates of insurance including insurance coverage in accordance with the provisions of ARTICLE XIV hereof.
- (C) In the event of termination of this Agreement Licensee shall remove its attachments from Licensor's poles within six (6) months from date of termination; provided, however, that Licensee shall be liable for and pay all fees pursuant to the terms of this Agreement to Licensor until Licensee's attachments are removed from Licensor's poles.
- (D) If Licensee does not remove its attachments from Licensor's poles within the applicable time periods specified in this Agreement, Licensor shall have the right to remove them at the expense of Licensee and without any liability on the part of Licensor to Licensee therefor; and Licensee shall be liable for and pay all fees pursuant to the terms of this Agreement to Licensor until such attachments are removed.

ARTICLE XIX

TERM OF AGREEMENT

- (A) This Agreement shall remain in effect for a term of five (5) years from the date hereof.
- (B) Termination of this Agreement or any licenses issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination.

ARTICLE XX

NOTICES

All written notices required under this Agreement shall be given by posting the same in first class mail as follows:

To Licensee: **Amendments/Agreements/Applications**

Mr. Reginald Clark  
State Cable TV Corporation  
83 Anthony Avenue  
Augusta, ME 04330

**Billing Notices**

Same As Above

To Licensor: **Agreements/Amendments**

New England Telephone and Telegraph Company  
d/b/a Bell Atlantic-New England  
**Facilities Managment**  
125 High Street, Room: 1406  
Boston, MA 02110-2721

**Pole License Applications**

New England Telephone and Telegraph Company  
d/b/a Bell Atlantic-New England  
**Reimbursable Construction**  
125 High Street, Room: 1406  
Boston, MA 02110-2721

To Licensor: Mr. Kevin Cote  
Public Service Company of New Hampshire  
1250 Hooksett Road  
Hooksett, NH 03106

To Licensor: Ms. Deborah Martone  
Industry Affairs  
MCT, Inc.  
11 Kearsarge Avenue  
Contoocook, NH 03229-0368

This Agreement cancels and supersedes any and all previous pole attachment agreements between the Licensors and Licensee, as amended, dated August 17, 1993, insofar as the aforementioned municipality is concerned except as to liabilities already accrued, if any.

In WITNESS WHEREOF, the parties hereto have executed this Agreement in quadruplicate on the day and year first above written.

**STATE CABLE TV CORPORATION**  
(Licensee)

By: *Michael C. Clark*  
(Name)

Title: *Vice President*

Date: *10/21/98*

**NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY d/b/a BELL ATLANTIC-NEW ENGLAND**  
(Licensor)

By: *James A. Lynn*  
(Name)

*for* Title: Director IFC&A

Date: *10/27/98*

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**  
(Licensor)

By: *Paul B. Bohan*  
(Name)

Title: *MANAGER - SYSTEM PROJECTS*

Date: *10/6/98*

**CONTOOCH VALLEY TELEPHONE COMPANY, INC.**  
(Licensor)

By: *Paul E. Volante*  
(Name)

Title: President and CEO

Date: October 16, 1998

## APPENDIX I

## SCHEDULE OF FEES AND CHARGES

Pole Attachments(A) Attachment1. General

- (a) Attachment fees commence on the first day of the month following the date the license is issued.
- (b) Fees shall be payable semi-annually in advance on the first day of January and July.
- (c) For the purpose of computing the attachment fees due hereunder, the fee shall be based upon the number of poles for which licenses have been issued on the first day of each semi-annual period. The first advance payment of the semi-annual fee for licenses issued under this Agreement shall include a proration from the first day of the month following the date the license was issued to the first regular semi-annual payment date.

2. Attachment Fee

For each pole solely owned by the Licensor and on which space has been reserved or occupied by the Licensee pursuant to this Agreement payment shall be as follows:

- \$ 6.84 per attachment per solely owned Electric Company pole
- \$ 5.00 per attachment per solely owned Contoocook Valley Telephone Company, Inc. pole
- \$ 9.67 per attachment per solely owned New England Telephone and Telegraph Company d/b/a Bell Atlantic-New England pole
- \$ 5.92 per attachment per two party owned Electric Company and Contoocook Valley Telephone Company, Inc. pole,  
\$ 3.42 to the Electric Company and \$ 2.50 to Contoocook Valley Telephone Company, Inc.
- \$ 7.34 per attachment per two party owned New England Telephone Company and Telegraph Company d/b/a Bell Atlantic-New England and Contoocook Valley Telephone Company, Inc., \$ 4.84 to New England Telephone and Telegraph Company d/b/a Bell Atlantic-New England and
- \$ 2.50 to Contoocook Valley Telephone Company, Inc.

## APPENDIX I

\$ 8.26 per attachment per two party owned by Electric Company and New England and Telegraph Company d/b/a Bell Atlantic-New England , \$ 3.42 to the Electric Company and \$ 4.84 to New England Telephone and Telegraph Company d/b/a Bell Atlantic-New England.

\$ 7.18 per attachment per tri-party owned poles, \$ 2.28 of which is to be paid to the Electric Company, \$ 1.67 to be paid to Contoocook Valley Telephone Company, Inc. and \$ 3.23 to be paid to the New England Telephone and Telegraph Company d/b/a Bell Atlantic-New England

(B) Other ChargesComputation

All charges for field survey, inspections, removal of Licensee's facilities from Licensor's poles and any other work performed for Licensee shall be based upon the full cost and expense to Licensor of such work or for having such work performed by an authorized representative plus, unless waived by Licensor or either of them, an amount equal to ten (10%) percent of Licensor's full cost.

(C) Cost of Replacement, Rearrangements and Changes

1. Whenever any pole is, or becomes, after initial Licensee's attachments, in the opinion of the Licensor, insufficient in height or strength for the Licensee's proposed attachments thereon in addition to the existing attachments of the Licensor and municipality the Licensor shall replace such pole with a new pole of the necessary height and class and shall make such other changes in the existing pole line in which such pole is included as the conditions may then require. The Licensee shall pay the Licensor for the expense thereof, including, but not limited, to the following:
  - (a) The net loss to the Licensor on the replaced pole based on its reproduction cost less depreciation plus cost of removal.
  - (b) Excess height or strength of the new pole over the existing pole necessary by reason of the Licensee's attachments
  - (c) Transferring Licensor's attachments from the old to the new pole.
  - (d) Any other rearrangements and changes necessary by reason of the Licensee's proposed or existing attachments.

APPENDIX I

2. In the event that the Licensors or either of them shall permit the Licensee to place its attachments in space reserved by either of them or for any] municipality and the Licensors or either of them or any municipality shall deem it necessary to use such space, or the pole is to be replaced at any time because of obsolescence, public requirement or other reason, then the Licensors shall replace the pole with a suitable pole to provide the basic space reservation where necessary, and the Licensee shall be billed, as provided for in Section (C) 1, a-d, inclusive, above.

(D) Payment Date

Failure to pay all fees and charges within 30 days after presentment of the bill therefore or on the specified payment date, whichever is later, shall constitute a default of this Agreement.

For bills rendered by Licensor, New England Telephone and Telegraph Company d/b/a Bell Atlantic-New England, the following shall be applicable:

"Interest shall accrue and be payable to Licensor at the rate set by the Commissioner of Internal Revenue pursuant to Internal Revenue Code, Section 6621; Treasury Regulation Section 301.6621-1, from and after the payment date of any payment required by this License. The payment of any interest shall not cure or excuse any default by Licensee under this License."

For bills rendered by Licensor, Public Service Company of New Hampshire, the following shall be applicable:

All amounts previously billed, but remaining unpaid, thirty (30) days from the date of the invoice shall be subject to a late payment charge of one and one half percent (1 1/2%) per month, such amounts include any prior, unpaid late payment charges.

APPENDIX II

MULTIPLE POLE ATTACHMENT LICENSE APPLICATIONS

APPENDIX II

Procedure for Processing  
Multiple Pole Attachment License Applications

The following procedure shall be adhered to in processing applications to attach to Licensor's poles by multiple licensees.

A. DEFINITIONS

Simultaneous license applications

Properly completed pole license applications relative to the same pole which are received by the Licensor from multiple applicants on the same business day.

Non-Simultaneous license applications

Properly completed pole license applications relative to the same pole which are received by the Licensor from multiple applicants on different business days.

Initial applicant

The applicant filing the first properly completed license application (non-simultaneous) for attachment to a specific pole.

Additional applicant

Each applicant filing a properly completed license application (non-simultaneous) for attachment to a specific pole for which a prior license application has been received by the Licensor.

Make-Ready Work

The work required (including rearrangement and transfer of existing facilities on a pole, replacement of poles or any other changes) to accommodate the Licensee's attachments on Licensor's pole.

Option 1

An arrangement whereby Licensor will process the license application of initial applicant as if there is no other license application on file for the same pole.

Option 2

An arrangement whereby Licensor will process license applications of initial and additional applicant in accordance with the procedure applicable for simultaneous multiple license applications.

## APPENDIX II

**B. MULTIPLE LICENSE APPLICATION PROCESSING**

Both simultaneous and non-simultaneous multiple license applications for the same pole will be processed by the Licensor in accordance with the procedures set forth in the flow chart which comprises pages 5 to 7 inclusive, of this Appendix.

**C. OPTION ARRANGEMENTS**

1. Upon being offered Options 1 and 2, the initial applicant will be advised that he may make an immediate selection of the option he desires or he may delay his selection until the required make-ready survey work has been completed and the estimate of make-ready charges quoted by the Licensor. Where the initial applicant elects to delay his decision, he shall be required to indicate the option he desires within 15 days after the Licensor has quoted the estimate of the make-ready charges that will apply, otherwise, the Licensor will deem the initial applicant to have selected Option 1.
2. The license application processing procedure to be adhered to in accordance with Option 2 will be subject to acceptance by all of the multiple applicants involved. The additional applicant(s) will have 15 days from the date he is advised by the Licensor that the initial applicant has selected Option 2 to accept or reject the conditions applicable under Option 2, otherwise, the Licensor will deem the additional applicant(s) to have rejected such conditions.
3. All work in progress on the initial applicant's license application involving multiple pole attachments will be suspended by the Licensor from the time that the initial applicant is offered Options 1 and 2 until he notifies the Licensor of the option he elects in accordance with C.1. above.

**D. MAKE-READY SURVEY REQUIREMENT**

1. Where required make-ready survey is to be completed on two bases, the multiple applicants shall be so advised before such survey is commenced.
2. The make-ready survey required to develop the estimated charges applicable for Options 1 and 2 will include a determination of the work requirements necessary to:
  - a. issue licenses simultaneously to the multiple applicants and,
  - b. issue licenses to the initial applicant before commencing the required make-ready work necessary to accommodate the additional applicant(s).

APPENDIX II

3. Licensor will consider any license application involving simultaneous multiple attachments as cancelled upon the failure of an applicant to notify the Licensor in writing of his acceptance of the estimate of make-ready charges and accompany such acceptance with the advance payment within 15 days following his receipt of such estimate from the Licensor.
4. Licensor or his authorized representative will perform the make-ready survey in all situations involving simultaneous license applications.
5. Where an initial applicant has been authorized by Licensor to perform its own make-ready survey, and properly completed pole applications are received from an additional applicant(s), establishing a non-simultaneous license application situation, the conditions of Option 1 will automatically apply and the option arrangements, detailed in Section C of this Appendix, will not be applicable.

E. MAKE-READY WORK SCHEDULE

Any simultaneous multiple applicant who cannot agree with the alternative arrangement that provides for the Licensor to complete ALL make-ready work before simultaneously granting licenses to all multiple applicants will be deemed by the Licensor to have cancelled his application.

F. CHANGES IN APPENDIX

This Appendix may be changed in whole or in part at any time during the term of this Agreement at the sole option of the Licensor upon the giving of not less than 30 days written notice thereof to the Licensee(s) and to substitute in place thereof such other provisions as the Licensor may deem necessary as relative to multiple attachments to poles of the Licensor.

**PROCEDURE FOR PROCESSING  
MULTIPLE POLE ATTACHMENT LICENSE APPLICATIONS**

1. <u>WHERE NO MAKE-READY SURVEY EXPENSE HAS BEEN INCURRED BY LICENSOR</u>				
<u>A. SIMULTANEOUS APPLICATIONS</u>	<p align="center"><u>MAKE-READY SURVEY REQUIREMENT</u></p> <p>TO BE DONE ON TWO BASES TO DETERMINE ACCOMMODATION REQUIREMENTS FOR:</p> <p>1. attachment by single licensee</p> <p>2. attachment by multiple licensees</p>	<p align="center"><u>MAKE-READY SURVEY COST ALLOCATION</u></p> <p>TOTAL COST TO BE SHARED EQUALLY BY MULTIPLE APPLICANTS.</p>	<p align="center"><u>MAKE-READY WORK SCHEDULE</u></p> <p>MULTIPLE APPLICANTS MUST DEVELOP MUTUALLY AGREEABLE:</p> <p>1. order of pole availability and</p> <p>2. overall completion schedule</p> <p>-WHERE MULTIPLE APPLICANTS CANNOT AGREE WITHIN 15 DAYS FROM RECEIPT OF ESTIMATE FROM LICENSOR, LICENSOR WILL OFFER AS AN ALTERNATIVE, TO COMPLETE ALL MAKE-READY WORK INVOLVED BEFORE SIMULTANEOUSLY GRANTING LICENSES TO MULTIPLE APPLICANTS.</p>	<p align="center"><u>MAKE-READY COST ALLOCATIONS</u></p> <p>TOTAL COST SHARED EQUALLY BY MULTIPLE APPLICANTS.</p> <p>- IF ONLY ONE APPLICANT AGREES TO ESTIMATED SHARED PORTION OF TOTAL COST, THAT APPLICANT WILL BE QUOTED THE COST APPLICABLE TO ACCOMMODATE A SINGLE LICENSEE (SEE 1. UNDER MAKE-READY SURVEY REQUIREMENT)</p>
<p><u>B. NON-SIMULTANEOUS APPLICATIONS</u></p> <p>OPTIONS AVAILABLE INITIAL APPLICANT</p> <p><u>OPTION 1</u> (LICENSOR WILL PROCESS AS IF NO MULTIPLE LICENSE APPLICATION EXIST.)</p>	<p align="center">↑</p> <p>TO BE DONE ON TWO BASES TO DETERMINE ACCOMMODATION REQUIREMENTS FOR:</p> <p>1. attachment by single licensee</p> <p>2. attachment by multiple licensees</p>	<p align="center">↑</p> <p>TOTAL COST TO BE SHARED EQUALLY BY MULTIPLE APPLICANTS</p>	<p align="center"><u>INITIAL APPLICANT</u></p> <p>LICENSOR WILL TREAT AS A NON-MULTIPLE APPLICANT.</p> <p>- ANY CHANGE OF PRIORITY OF POLE AVAILABILITY OR OVERALL COMPLETION SCHEDULE THAT IS DESIRED AFTER EITHER HAS BEEN INITIALLY AGREED UPON WITH THE LICENSOR IS SUBJECT TO LICENSOR'S ABILITY TO ACCOMMODATE IN ITS ESTABLISHED WORK SCHEDULE.</p>	<p align="center"><u>INITIAL APPLICANT</u></p> <p>IS CHARGED THE COST ATTRIBUTABLE TO THE WORK INVOLVED TO ACCOMMODATE ATTACHMENT BY ONE LICENSEE.</p> <p><u>ADDITIONAL APPLICANT</u></p> <p>IS CHARGED THE COST ATTRIBUTABLE TO THE WORK INVOLVED TO ACCOMMODATE ATTACHMENT BY AN ADDITIONAL LICENSEE ON A POLE ALREADY ATTACHED BY INITIAL LICENSEE.</p>
<p><u>OPTION 2</u> (LICENSOR WILL PROCESS AS SIMULTANEOUS LICENSE APPLICATIONS.)</p>	<p align="center">↓</p>	<p align="center">↓</p>	<p><u>ADDITIONAL APPLICANT</u></p> <p>REQUIRED MAKE-READY WORK WILL NOT BE PERFORMED UNTIL LICENSES HAVE BEEN GRANTED TO INITIAL APPLICANT UNLESS THE PERFORMANCE OF SUCH WORK WILL NOT DELAY THE COMPLETION OF THE MAKE-READY WORK REQUIRED TO ACCOMMODATE THE INITIAL APPLICANT.</p> <p>SAME AS I.A.</p>	<p>SAME AS I.A.</p>

APPENDIX II

PROCEDURE FOR PROCESSING

MULTIPLE POLE ATTACHMENT LICENSE APPLICATIONS

II WHERE PARTIAL MAKE-READY SURVEY EXPENSE HAS BEEN INCURRED BY LICENSOR

OPTIONS AVAILABLE TO INITIAL APPLICANT

OPTION 1

(LICENSOR WILL PROCESS AS IF NO MULTIPLE LICENSE APPLICATIONS EXIST)

OPTION 2

(LICENSOR WILL PROCESS AS "SIMULTANEOUS" LICENSE APPLICATIONS).

MAKE-READY SURVEY TO REQUIREMENT

BALANCE OF REQUIRED SURVEY TO BE COMPLETED ON TWO BASES DETERMINE ACCOMMODATION REQUIREMENTS FOR:

1. attachment by single licenses
2. attachment by multiple licenses
  - (a) Simultaneously
  - (b) non-simultaneously

PORTION OF SURVEY ALREADY COMPLETED FOR INITIAL APPLICANT WILL BE RESURVEYED TO DETERMINE THE REQUIREMENTS TO ACCOMMODATE AN ADDITIONAL LICENSEE.

MAKE-READY SURVEY COST ALLOCATION

INITIAL APPLICANT

WILL BE CHARGED THE COST INCURRED FOR THAT PORTION OF THE SURVEY WHICH HAS ALREADY BEEN COMPLETED.

ADDITIONAL APPLICANT

WILL BE CHARGED THE COST INCURRED TO RESURVEY THE COMPLETED PORTION OF THE SURVEY TO DETERMINE THE REQUIREMENTS TO ACCOMMODATE ATTACHMENT BY MULTIPLE LICENSEES.

TOTAL COST OF THE BALANCE OF THE REQUIRED SURVEY WILL BE SHARED EQUALLY BY THE MULTIPLE APPLICANTS.

MAKE READY WORK SCHEDULE

SAME AS I.B.

SAME AS I.A.

MAKE-READY COST ALLOCATIONS

SAME AS I.B.

SAME AS I.A.

20  
21  
22  
23  
24  
25  
26  
27

**PROCEDURE FOR PROCESSING  
MULTIPLE POLE ATTACHMENT LICENSE APPLICATIONS**

**III. WHERE MAKE-READY SURVEY IS  
COMPLETE BUT MAKE-READY  
WORK HAS NOT PHYSICALLY  
COMMENCED**

**OPTIONS AVAILABLE TO  
INITIAL APPLICANT**

**OPTION 1**

(LICENSOR WILL PROCESS AS  
IF NO MULTIPLE LICENSE  
APPLICATIONS EXIST)

**OPTION 2**

(LICENSOR WILL PROCESS AS  
"SIMULTANEOUS" MULTIPLE  
LICENSE APPLICATIONS)

**MAKE-READY SURVEY  
REQUIREMENT**

RESURVEY REQUIRED TO DETERMINE  
ACCOMMODATION REQUIREMENTS  
FOR ATTACHMENT BY MULTIPLE  
LICENSEES:

1. SIMULTANEOUSLY
2. NON-SIMULTANEOUSLY

**MAKE-READY SURVEY  
COST ALLOCATION**

**INITIAL APPLICANT**  
WILL BE CHARGED THE COST OF  
THE SURVEY WHICH HAS ALREADY  
BEEN COMPLETED.

**ADDITIONAL APPLICANT**  
WILL BE CHARGED THE COST TO  
RESURVEY TO DETERMINE THE RE-  
QUIREMENTS FOR ACCOMMODATING  
MULTIPLE LICENSEES.

**MAKE-READY WORK SCHEDULE**

SAME AS I.B.

SAME AS I.A.

**MAKE-READY COST ALLOCATIONS**

SAME AS I.B.

SAME AS I.A.

APPENDIX II

**EXPLANATION OF THE USE OF APPENDIX III  
ADMINISTRATIVE FORMS**

1. At the time any Licensee anticipates a request for a new license, it should (pursuant to Article VII) submit to each Licensor: Form A-1 (Application and Pole Attachment License) and Form A-2 (Pole Details) - (pursuant to Article VIII) Form B-1 (Authorization for Field Survey Work), Form B-2 (Authorization for Pole Make-Ready Work) and Form C (Itemized Estimate of Pole Make -Ready Work and Charges, which will be completed by New England Telephone and Telegraph Company d/b/a Bell Atlantic-New England.
2. Each Licensor shall fill out Part I of Form B-1 (Authorization for Field Survey Work). If Licensee agrees to the field survey estimate, it will fill out, execute and return the form to the Licensor with the appropriate fee.
3. Each Licensor shall fill out Form B-2 (Authorization for Pole Make Ready Work) when appropriate. If Licensee agrees to the make ready changes, it will execute and return to the Licensor with the appropriate fee. (See Article VIII, para. D.)
4. Form C is used by New England Telephone and Telegraph Company d/b/a Bell Atlantic-New England to more fully explain the estimated charges. When requested by the Licensee, this breakdown of charges may be sent by New England Telephone and Telegraph Company d/b/a Bell Atlantic-New England.
5. After the completion of the Make Ready Work, the Licensor shall complete Form A-1 with a license number, date and signature. Licensee's receipt of this executed A-1 is its authorization to make the attachments described in the application.
6. Any time a Licensee discontinues the use of a pole or poles upon which it has a license, it shall submit Form D (Notification of Discontinuance of the Use of Poles) to each Licensor.
7. Form F (Bond) will be submitted by the Licensee to the appropriate Licensor from time to time as specified in Article III, para. C.
8. Form E (Certificate of Insurance) will be submitted by Licensee prior to the execution of the License Agreement.

REVISED 5-11-94

APPENDIX III

Index of License Application Forms

Application and Pole Attachment License	A-1
Pole Details	A-2
Authorization for Field Survey Work	B-1
Authorization for Pole Make-Ready Work	B-2
Itemized Pole Make-Ready Work and Charges	C
Notification of Discontinuance of Use of Poles	D
Certificate of Insurance (Omitted 11/18/94)	E
Bond	F
Identification Tags	G

Appendix III  
Form A-1  
Revised 01/01/98

**APPLICATION AND POLE ATTACHMENT LICENSE**

Licensee State Cable TV Corporation  
Street Address \_\_\_\_\_  
City and State \_\_\_\_\_  
Date \_\_\_\_\_

In accordance with the terms and conditions of the License Agreement between us, dated October 27, 19 98, application is hereby made for a license to make \_\_\_\_\_ attachments to JO poles, \_\_\_\_\_ attachments to FO poles, \_\_\_\_\_ attachments to JU poles and \_\_\_\_\_ Power Supplies located in the municipality of \_\_\_\_\_, as indicated on Form A-2. This request will be designated Pole Attachment License Application Number \_\_\_\_\_

Licensee's Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_

\_\_\_\_\_  
Power Company

Title \_\_\_\_\_

Tel. No. \_\_\_\_\_

Fax No. \_\_\_\_\_

\*\*\*\*\*For license use, do not write below this line\*\*\*\*\*

Pole Attachment License Application Number \_\_\_\_\_ is hereby granted to make the attachments described in this application to \_\_\_\_\_ attachments to JO poles, \_\_\_\_\_ attachments to FO poles, \_\_\_\_\_ attachments to JU poles and \_\_\_\_\_ Power Supplies located in the municipality of \_\_\_\_\_ as indicated on the attached form A-2. This request will be designated Pole Attachment License Application Number \_\_\_\_\_

Licensor's Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_

\_\_\_\_\_  
(AGREEMENT ID #)

Title \_\_\_\_\_

Date \_\_\_\_\_

Tel. No. \_\_\_\_\_

**It is the Licensee's responsibility to submit an original copy of this application to New England Telephone and Telegraph Company d/b/a Bell Atlantic-New England and the appropriate Power Company. Individual applications to be numbered in sequential ascending order by Licensee for each License Agreement. Licensor will process applications in sequential ascending order according to the application numbers assigned by the Licensee.**

Appendix III  
Form A-2  
Revised 5/11/94

**POLE DETAILS**

State Cable TV Corporation License Application Number \_\_\_\_\_  
Licensee  
Public Service Company of New Hampshire  
Power Company Involved  
\_\_\_\_\_  
Municipality where poles are located

Note: Provide separate applications for each municipality

<u>Pole No.</u>	<u>Location</u> <sup>1</sup>	<u>Attach.</u> <sup>2</sup>	<u>Tax</u>	<u>Lic.</u>	<u>Lic.</u>
			<u>Dist.</u>	<u>No.</u>	<u>Date</u>

LICENSOR WILL PROVIDE AN ITEMIZED ESTIMATE OF POLE MAKE READY WORK REQUIRED AND ASSOCIATED CHARGES (APPENDIX III FORM C).

Licensee's Signature \_\_\_\_\_

Title \_\_\_\_\_

- (1) Indicate location by providing name of street, highway, route, etc., e.g., South Street, north of (N/O) Jones Road. Private Property Poles should be identified as such e.g., P.P. (Lead off pole 1234 South).
- (2) A complete description of all facilities shall be given including quantities, sizes and types of all cables and equipment.
- (3) Completed by Licensor.

Note: Attach Additional sheets if necessary

Appendix III  
 Form B-1  
 Revised 5/11/94

**AUTHORIZATION FOR FIELD SURVEY WORK**

Licensee: State Cable TV Corporation

In accordance with Article IV, Paragraph (A) (1) of the License Agreement, following is a summary of the estimated charges which will apply to complete a field survey covering Pole Attachment License Application Number \_\_\_\_\_.

	<u>Hours</u>	<u>Rate/Hour</u>	<u>Total</u>
Field Survey	_____	_____	\$ _____
Plus 10% Administrative Compensation			\$ _____
<b>TOTAL</b>			<b>\$ _____</b>

If you wish us to complete the required field survey, please sign this copy below and return with an advance payment in the amount of \$ \_\_\_\_\_. **Please note, this quote is only valid for 30 days.**

Licensor's Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Tel. No. \_\_\_\_\_

Date \_\_\_\_\_

The required field survey covering License Application No. \_\_\_\_\_ is authorized and the costs therefore will be paid to Licensor in accordance with Appendix I to License Agreement. My anticipated date of attachment is \_\_\_\_\_.

Licensee's Name Print \_\_\_\_\_

Signature \_\_\_\_\_

Tel. No. \_\_\_\_\_

Date \_\_\_\_\_

Appendix III  
 Form B-2  
 Revised 5/11/94

**AUTHORIZATION FOR POLE MAKE-READY WORK**

State Cable TV Corporation  
 Licensee

Field survey work associated with your License Application No. \_\_\_\_\_ dated  
 \_\_\_\_\_ 19\_\_\_\_, for attachment to poles has been completed.

Following is a summary of the estimated make ready charges which will apply.

<u>Make-Ready Work</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Total</u>
Labor	_____	_____	\$ _____
Material			\$ _____
Sub Total			\$ _____
Plus 10% Administrative Compensation			\$ _____

Attached, as requested, is an itemized estimate (Form C) of required make-ready work and associated charges. If you wish us to complete the required make-ready work, please sign this copy below and return with an advance payment in the amount of \$\_\_\_\_\_.

Licensor's Name (Print) \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Title \_\_\_\_\_  
 Address \_\_\_\_\_  
 Tel. No \_\_\_\_\_  
 Date \_\_\_\_\_

The replacements and rearrangements included in License Application No. \_\_\_\_\_ are authorized and the costs therefore will be paid to Licensor in accordance with Appendix I to License Agreement

Licensee's Name (Print) \_\_\_\_\_  
 Signature \_\_\_\_\_ Tel. No. \_\_\_\_\_  
 Title \_\_\_\_\_ Date \_\_\_\_\_



**EXPLANATION OF COLUMNS for Form G**

To be filled in by Licensee:

- (1) Designate pole number assigned by each utility company

T - Telephone      E - Electric

- (2) Name of Street, Road, Highway, Route, etc.

To be filled in by Licensor:

- (3) Work Operation Description, e.g.

Lwr 2 Ca 1'	Rse Rack 2'
Lwr Top Ca 1'	Plc A & G
Lwr Ca & Term 18"	Lwr Fire Alm 1'
Rpl Pole	Rse Trnsf 1'

- (4) Indicate Company to perform work operation, e.g.,

T - Telephone	P - Police
E - Electric	M - Municipality
C - CATV	O - Other Licensee
F - Fire	
T/C - Option - Either Telephone or CATV	

- (5) List Non-exempt Material Only

- (6) Indicate labor hours and costs required to perform work operations listed in (3).

Appendix III  
Form D  
Revised 01/01/98

**NOTIFICATION OF DISCONTINUANCE OF USE OF POLES**

Licensee State Cable TV Corporation  
Street Address \_\_\_\_\_  
City and State \_\_\_\_\_  
Date \_\_\_\_\_

In accordance with the terms of Agreement dated October 27, 19 98, notice is hereby given that attachments to the following poles in the municipality of \_\_\_\_\_ covered by permit number \_\_\_\_\_ were removed on \_\_\_\_\_ 19\_\_\_\_.

<u>Pole Number</u>	<u>Location</u>	<u>Attachment</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Total number of attachments to JO poles to be discontinued \_\_\_\_\_  
Total number of attachments to FO poles to be discontinued \_\_\_\_\_  
Total number of attachments to JU poles to be discontinued \_\_\_\_\_  
Total number of Power Supplies to be discontinued \_\_\_\_\_

Said permit is to be canceled in its entirety/partially as above.  
(circle one)

Licensee \_\_\_\_\_ Print Name \_\_\_\_\_  
Signature \_\_\_\_\_ Tel. No. \_\_\_\_\_  
Title \_\_\_\_\_ Date \_\_\_\_\_

Use of poles has been discontinued as above.

\_\_\_\_\_  
Licensor's Name (Print) Signature \_\_\_\_\_  
\_\_\_\_\_  
Title Date \_\_\_\_\_  
\_\_\_\_\_  
Tel. No.

**It is the Licensee's responsibility to submit an original copy of this form to New England Telephone and Telegraph Company d/b/a Bell Atlantic-New England and the appropriate Power Company.**



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LICENSE AGREEMENT

THIS AGREEMENT, made this 17 day of AUGUST 1993, by and between Public Service Company of New Hampshire, a corporation organized and existing under the laws of the State of New Hampshire, having its principal office in the City of Manchester, and New England Telephone and Telegraph Company, a corporation organized and existing under the laws of the State of New York, having its principal office in the City of Boston, Massachusetts (either or both hereinafter referred to as the "Licensor") and Grassroots Cable Systems, Inc., a corporation organized and existing under the laws of the State of New Hampshire, having its principal office in the City of Exeter, New Hampshire, hereinafter referred to as the "Licensee".

W I T N E S S E T H

WHEREAS, Licensee proposes to furnish communications services in the Towns of Albany(trunk run), Carroll, Conway (trunk run), Carroll, Conway (trunk run), Eaton, Franconia (trunk run), Madison, Middleton, Northumberland on Route 3 North, Stratford, Sugar Hill and Wakefield, in the State of New Hampshire; and

WHEREAS, Licensee will need to place and maintain attachments within the area described above and desires to place such attachments on poles of Licensor; which poles are either jointly or solely owned by the Licensors; and

WHEREAS, Licensor is willing to permit, to the extent they may lawfully do so, the placement of said attachments on Licensor's facilities where reasonably available and where such use will not interfere with Licensor's service requirements or the use of its facilities by others subject to the terms of this agreement;

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

ARTICLE I  
DEFINITIONS

As Used in This Agreement

- A) Anchor Rod  
A metal rod connected to an anchor and to which a guy strand is attached. Also known as a "guy rod".
- B) Attachment  
Any single strand, hardware, cable, wires and/or apparatus attached to a pole and owned by the Licensee.
- C) Guy Strand  
A metal cable of high tensile strength which is attached to a pole and anchor rod (or another pole) for the purpose of reducing pole stress.
- D) Joint Owner  
A person, firm or corporation having an ownership interest in a pole and/or anchor rod with Licensor.
- E) Make-Ready Work  
The work required (rearrangement and/or transfer of existing facilities on a pole, replacement of pole or any other changes) to accommodate the Licensee's attachments on Licensor's pole.
- F) Field Survey Work or Survey Work  
A survey of the poles on which Licensee wishes to attach in order to determine what work, if any, is required to make the pole ready to accommodate the required attachment, and to provide the basis for estimating the cost of this work

G) Other Licensee

Any entity, other than Licensee herein or a joint user, to whom Licensor has or hereafter shall extend the privilege of attaching communications facilities to Licensor's poles.

H) Joint User

A party with whom Licensor has entered into, or may hereafter enter into, a written agreement covering the rights and obligations of the parties thereto with respect to the use of poles and anchor rods owned by each party.

I) Suspension Strand

A metal cable of high tensile strength attached to pole and used to support communications facilities. Also known as "Messenger Cable".

J) Identification Tags

Identification tags are used to identify Licensee's plant. Identification tags shall be made of polyethylene and polyvinyl chloride with ultraviolet inhibitors. The two types of Identification tags are cable and apparatus tags as described in Appendix III, Form G.

Article II  
SCOPE OF AGREEMENT

- (A) Subject to the provisions of this Agreement, Licensor agrees to issue to Licensee for any lawful communications purpose, revocable, nonexclusive licenses authorizing the attachment of Licensee's attachments to Licensor's poles within the Towns of Albany (trunk run), Carroll, Conway (trunk run), Eaton, Franconia (trunk run), Madison, Middleton, Northumberland on Route 3 North, Stratford, Sugar Hill and Wakefield in the State of New Hampshire.
- (B) No use, however extended, of Licensor's poles or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in such poles. Licensee's rights herein shall be and remain a license. Neither this Agreement nor any license granted hereunder shall constitute an assignment of any of Licensor's rights to use the public or private property at the location of Licensor's poles.
- (C) Nothing contained in this Agreement shall be construed to compel Licensor to construct, retain, extend, place or maintain any pole, or other facilities not needed for Licensor's own service requirements.
- (D) Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against Licensor with respect to any agreement(s) and arrangement(s) which Licensor has heretofore entered into, or may in the future enter into with others not parties to this Agreement regarding the poles covered by this Agreement. The rights of Licensee shall at all times be subject to any such existing agreement(s) or arrangement(s) between Licensor and any joint owner(s) or joint user(s) of Licensor's poles.

ARTICLE III  
FEES AND CHARGES

- (A) Licensee agrees to pay to Licensor the fees and charges as specified in and in accordance with the terms and conditions of APPENDIX I, attached hereto and made a part hereof.
- (B) Nonpayment of any amount due under this Agreement shall constitute a default of this Agreement.
- (C) Licensee shall furnish bond or other satisfactory evidence of financial security in such form (Appendix III Form F hereto attached) and amount as Licensor from time to time may require, in an initial amount of \$ , but not exceeding \$50,000.00, to guarantee the payment of any sums which may become due to Licensor for fees due hereunder or charges for work performed for the benefit of Licensee under this Agreement, including

the removal of Licensee's attachments upon termination of this Agreement or upon termination of any License issued hereunder. The financial security requirement may be waived in writing by Licensor or either of them and reinstated if waived.

- (D) The Licensor may change the amount of fees and charges specified in Appendix I by giving the Licensee not less than sixty (60) days' written notice prior to the date the change is to become effective. Notwithstanding any other provision of this Agreement, Licensee may terminate this Agreement at the end of such sixty-day notice period if the change in fees and charges is not acceptable to Licensee; provided Licensee gives Licensor written notice of its election to terminate this Agreement at least thirty (30) days prior to the end of such sixty-day period.
- (E) Changes or amendments to APPENDIX I shall be effected by the separate execution of APPENDIX I as so modified. The separately executed APPENDIX I shall become a part of and be governed by the terms and conditions of this Agreement. Such changes or amendments shall become effective within sixty (60) days and shall be presumed acceptable unless within that period Licensee advises Licensor in writing that the changes and amendments are unacceptable and, in addition, within thirty (30) days thereafter submits the issue to the regulatory body asserting jurisdiction over this agreement for decision.

#### ARTICLE IV

##### ADVANCE PAYMENT

- (A) Licensee shall make an advance payment to the Licensor prior to:
  - (1) any undertaking by Licensor of the required field survey [See Article VIII para. (A)] in an amount specified by Licensor sufficient to cover the estimated cost to be incurred by Licensor to complete such survey.
  - (2) any performance by Licensor of any make-ready work required in an amount specified by Licensor sufficient to cover the estimated cost to be incurred by Licensor to complete the required make-ready work.
- (B) The amount of the advance payment required will be credited against the full cost to Licensor for performing such work or having such work performed by others plus, unless waived by Licensor or either of them, an amount equal to ten (10%) percent of Licensor's full cost.

- c) Where the advance payment made by Licensee to Licensor for field survey or make-ready work is less than the full cost to Licensor for such work, Licensee agrees to pay Licensor all sums due in excess of the amount of the advance payment.
- D) Where the advance payment made by Licensee to Licensor for field survey or make-ready work exceeds the full cost to Licensor for such work, Licensor shall refund the difference to Licensee.

ARTICLE V  
SPECIFICATIONS

- A) Licensee's attachments shall be placed and maintained in accordance with the requirements and specifications of the latest editions of the Manual of Construction Procedures (Blue Book, the National Electrical Code (NEC), the National Electrical Safety Code (NESC) and rules and regulations of the Occupational Safety and Health Act (OSHA) or any governing authority having jurisdiction over the subject matter. Where a difference in specifications may exist, the more stringent shall apply.
- B) If any part of Licensee's attachments is not so placed and maintained, Licensor may upon ten (10) days written notice to Licensee and in addition to any other remedies Licensor may have hereunder, remove Licensee's attachments from any or all of Licensor's poles or perform such other work and take such other action in connection with said attachments that Licensor deems necessary or advisable to provide for the safety of Licensor's employees or performance of Licensor's service obligation at the cost and expense to Licensee and without any liability therefor; provided, however, that when in the sole judgement of Licensor such a condition may endanger the safety of Licensor's employees or interfere with the performance of Licensor's service obligations, Licensor may take such action without prior notice to Licensee.
- C) As described in Appendix III, Section G, Licensee shall place Identification cable tags on cables located on poles and Identification Apparatus tags on any associated items of Licensee's Plant, e.g., guys, anchors or terminals. The Telephone Company, in its sole determination, has the right to approve all identification tags that are different than those described in Appendix III, Section G.
- D) The Licensee shall take all necessary or advisable precautions by the installation of protective equipment or otherwise at its sole cost and expense to protect against interference with the services or lines of the Licensors and injury or damage to persons or property including employees and property of the Licensors.

- E) Notwithstanding anything permitted or required by the specifications and codes referred to in the first paragraph of this Article V, the Licensee shall, at its expense, so install, maintain and operate its attachments that they are compatible with the facilities of the Electric Company energized at voltages up to and including 22,000 volts to ground, provided however, that the Licensee shall not be required to accommodate its attachments to voltages above 7200 volts to ground until notified by the Electric Company from time to time, of (a) the higher voltage at which the Electric Company will be operating its facilities, and (b) the area affected by such operations, and (c) the time when such operation will begin.

ARTICLE VI  
LEGAL REQUIREMENTS

- A) Licensee shall be responsible for obtaining from the appropriate public and/or private authority any required authorization to construct, operate and/or maintain its attachments on public and private property at the location of Licensor's pole which Licensee uses and shall submit to Licensor evidence of such authority before making attachment on such public and/or private property.
- B) The applicable provisions in the attachment entitled "Non-Discrimination Compliance Agreement" shall form a part of this agreement and any amendments thereto. (Attachment A)
- C) The parties hereto shall at all times observe and comply with, and the provisions of the Agreement are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties hereto under this Agreement, so long as such laws, ordinances or regulations remain in effect.

- (D) No license granted under this Agreement shall extend to any of Licensor's poles where the placement of Licensee's attachments would result in a forfeiture of the rights of Licensor or joint users to occupy the property on which such poles are located. If placement of Licensee's attachments would result in a forfeiture of the rights of Licensor or joint users, or both, to occupy such property, Licensee agrees to remove its attachments forthwith; and Licensee agrees to pay Licensor or joint users, or both, all losses, damages, and costs incurred as a result thereof.

#### ARTICLE VII

##### ISSUANCE OF LICENSES

- (A) Before Licensee shall attach to any pole, Licensee shall make application for and have received a license therefor in the form of APPENDIX III, Forms A-1 and A-2.
- (B) Licensee agrees to limit the filing of applications for pole attachment licenses to include not more than 200 poles on any one application and 2,000 poles on all applications which are pending approval by Licensor at any one time. Such limitations will apply to Licensor's poles located within a single plant construction district of Licensor. Licensee further agrees to designate a desired priority of completion of the field survey and make-ready work for each application relative to all other of its applications on file with Licensor at the same time.

#### ARTICLE VIII

##### POLE MAKE-READY WORK

- (A) A field survey will be required for each pole for which attachment is requested to determine the adequacy of the pole to accommodate Licensee's attachments. The field survey will be performed jointly by representatives of Licensor, joint owner and/or joint user and Licensee.
- (B) Licensor reserves the right to refuse to grant a license for attachment to a pole when Licensor determines that the communications space on such pole is required for its exclusive use or that the pole may not reasonably be rearranged or replaced to accommodate Licensee's attachments.

- (C) In the event Licensor determines that a pole to which Licensee desires to make attachments is inadequate or otherwise needs rearrangement of the existing facilities thereon to accommodate the attachments of Licensee in accordance with the specifications set forth in Article V, Licensor will indicate on the Authorization for Pole Make-Ready Work (Appendix III, Form B2) the estimated cost of the required make-ready work and return it to Licensee.
- (D) Any required make-ready work will be performed following receipt by Licensor of completed Form B2. Licensee shall pay Licensor for all make-ready work completed in accordance with the provisions of APPENDIX I, and shall also reimburse the owner(s) of other facilities attached to said poles for any expense incurred by it or them in transferring or rearranging such facilities to accommodate Licensee's pole attachments. Licensee shall not be entitled to reimbursement of any amounts paid to Licensor for pole replacements or for rearrangement of attachments on Licensor's poles by reason of the use by the Licensor or other authorized user(s) of any additional space resulting from such replacement or rearrangement.
- (E) Should Licensor, or another party with whom it has a joint use agreement, for its own service requirements, need to attach additional facilities to any of Licensor's poles, to which Licensee is attached, Licensee will either rearrange its attachments on the pole or transfer them to a replacement pole as determined by Licensor so that the additional facilities of Licensor or joint user may be attached. The rearrangement or transfer of Licensee's attachments will be made at Licensee's sole expense. If Licensee does not rearrange or transfer its attachments within fifteen (15) days after receipt of written notice from Licensor requesting such rearrangement or transfer, Licensor or joint user may perform or have performed such rearrangement or transfer and Licensee agrees to pay the costs thereof.
- (F) Licensor may, when it deems an emergency to exist, rearrange, transfer or remove Licensee's attachments to Licensor's poles, at Licensee's expense, and without any liability on the part of the Licensor for damage or injury to Licensee's attachments.
- (G) License applications received by Licensor from two or more licensees for attachment accommodations on the same pole, prior to the commencement of any field survey or make-ready work required to accommodate any licensee, will be processed by Licensor in accordance with the procedures detailed in APPENDIX II attached hereto.
- (H) In performing all make-ready work to accommodate Licensee's attachments, Licensor will endeavor to include such work in its normal work load schedule.

- (I) Licensee may attach its guy strand to Licensor's existing anchor rod at no charge where Licensor determines that adequate capacity is available; provided that Licensee agrees to secure any necessary right-of-way therefore from the appropriate property owner. Should Licensor, or joint user, if any, for its own service requirements, need to increase its load on the anchor rod to which Licensee's guy is attached, Licensee will either rearrange its guy strand on the anchor rod or transfer it to a replacement anchor as determined by Licensor. The cost of such rearrangement and/or transfer, and the placement of a new or replacing anchor will be at the sole expense of Licensee, which Licensee agrees to pay. If Licensee does not rearrange or transfer its guy strand within fifteen (15) days after receipt of written notice from Licensor regarding such requirement, Licensor or joint user may perform, or have performed, the work involved and Licensee agrees to pay the full costs thereof.

#### ARTICLE IX

##### CONSTRUCTION, MAINTENANCE AND REMOVAL OF ATTACHMENTS

- (A) Licensee shall, at its own expense, construct and maintain its attachments on Licensor's poles in a safe condition and in a manner acceptable to Licensor, so as not to conflict with the use of the Licensor's poles by Licensor or by other authorized users of Licensor's poles, nor electrically interfere with Licensor's facilities attached thereon.
- (B) Licensor shall specify the point of attachment on each of Licensor's poles to be occupied by Licensee's attachments. Where multiple licensees' attachments are involved, Licensor will attempt to the extent practical, to designate the same relative position on each pole for each licensee's attachments.
- (C) Licensee shall obtain specific written authorization from Licensor before relocating or replacing its attachments on Licensor's poles.
- (D) All tree trimming made necessary, in the opinion of the Licensors, by reason of the Licensee's proposed attachments at the time of attachment or thereafter, provided the owner(s) of such trees grants permission to the Licensee, shall be performed by contractors approved by Licensors, at the sole cost, expense and direction of the Licensee, except such trimming as may be required on Licensee's customers' premises, to clear Licensee's cable drops, which trimming shall be done by the Licensee at its expense.
- (E) Licensee, at its expense, will remove its attachments from any of Licensor's poles within fifteen (15) days after termination of the license covering such attachments.

If Licensee fails to remove its attachments within such fifteen (15) day period, Licensor shall have the right to remove such attachments at Licensee's expense and without any liability on the part of the Licensor for damage or injury to Licensee's attachments.

#### ARTICLE X

##### TERMINATION OF LICENSE

- (A) Any license issued under this Agreement shall automatically terminate when Licensee ceases to have authority to construct, operate and/or maintain its attachments on the public or private property at the location of the particular pole covered by the license.
- (B) Licensee may at any time remove its attachments from a pole after first giving Licensor written notice of such removal (APPENDIX III, Form D). Following such removal, no attachment shall again be made to such pole until Licensee shall have first complied with all of the provisions of this Agreement as though no such attachment had previously been made.

#### ARTICLE XI

##### INSPECTIONS OF LICENSEE'S ATTACHMENTS

- (A) Licensor reserves the right to make periodic inspections of any part of Licensee's attachments, including guying, attached to Licensor's poles, and Licensee shall reimburse Licensor for the expense of such inspections.
- (B) The frequency and extent of such inspections by Licensor will depend upon Licensee's adherence to the requirements of Articles V and VII herein.
- (C) Licensor will give Licensee advance written notice of such inspections, except in those instances where, in the sole judgement of Licensor, safety considerations justify the need for such an inspection without the delay of waiting until a written notice has been forwarded to Licensee.
- (D) The making of periodic inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation or liability assumed under this Agreement.
- (E) Any charge imposed by Licensor for such inspections shall be in addition to any other sums due and payable by Licensee under this Agreement. No act or failure to act by Licensor with regard to said charge or any unlicensed use by Licensee shall be deemed as a ratification or the licensing of the unlicensed use; and if any license should subsequently be issued, said license shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement or otherwise.

ARTICLE XII

UNAUTHORIZED ATTACHMENTS

- (A) If any of Licensee's attachments shall be found attached to Licensor's poles for which no license is outstanding, Licensor, without prejudice to its other rights or remedies under this Agreement (including termination) or otherwise, may impose a charge and require Licensee to submit in writing, within fifteen (15) days after receipt of written notification from Licensor of the unauthorized attachment, a pole attachment application. If such application is not received by the Licensor within the specified time period, Licensee shall remove its unauthorized attachment within fifteen (15) days of the final date for submitting the required application, or Licensor may remove Licensee's facilities without liability, and the expense of such removal shall be borne by Licensee.
- (B) For the purpose of determining the applicable charge, absent satisfactory evidence to the contrary, the unauthorized pole attachment shall be deemed as having existed since the date of this agreement, and the fees and charges as specified in APPENDIX I, shall be applicable thereto and due and payable forthwith whether or not Licensee is permitted to continue the pole attachment.

ARTICLE XIII

LIABILITY AND DAMAGES

- (A) Licensor reserves to itself, its successors and assigns, the right to locate and maintain its poles and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements. Licensor shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's communications services arising in any manner, except from Licensor's sole negligence, out of the use of Licensor's poles.
- (B) Licensee shall exercise precaution to avoid damaging the facilities of Licensor and of others attached to Licensor's poles, and Licensee assumes all responsibility for any and all loss from such damage caused by Licensee's employees, agents or contractors. Licensee shall make an immediate report to Licensor and any other user of the occurrence of any such damage and agrees to reimburse the respective parties for all costs incurred in making repairs.

(C) Except, as may be caused by the sole negligence of Licensor, or either of them, Licensee shall defend, indemnify and save harmless Licensor, or either of them, against and from any and all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses arising from or in connection with this Agreement (including reasonable attorneys' fees) including, but not limited to, those which may be imposed upon, incurred by or asserted against Licensor, or either of them by reason of (a) any work or thing done upon the poles licensed hereunder or any part thereof performed by Licensee or any of its agents, contractors, servants, or employees; (b) any use, occupation, condition, operation of said poles or any part thereof by Licensee or any of its agents, contractors, servants, or employees; (c) any act or omission on the part of Licensee or any of its agents, contractors, servants, or employees, for which Licensor may be found liable; (d) any accident, injury (including death) or damage to any person or property occurring upon said poles or any part thereof arising out of any use thereof by Licensee or any of its agents, contractors, servants, or employees; (e) any failure on the part of Licensee to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement, (f) payments made under any Workers' Compensation Law or under any plan for employees disability and death benefits arising out of any use of the poles by Licensee or any of its agents, contractors, servants, employees or by (g) the erection, maintenance, presence, use, occupancy or removal of Licensee's attachments by Licensee or any of its agents, contractors, servants or employees or by their proximity to the facilities of other parties attached to Licensor's poles.

(D) Licensee shall indemnify, save harmless and defend Licensor from any and all claims and demands of whatever kind which arise directly or indirectly from the operation of Licensee's attachments, including taxes, special charges by others, claims and demands for damages or loss for infringement of copyright, for libel and slander, for unauthorized use of television broadcast programs, and for unauthorized use of other program material, and from and against all claims and demands for infringement of patents with respect to the manufacture, use and operation of Licensee's attachments in combination with Licensor's poles, or otherwise.

The provisions of this Article shall survive the expiration or earlier termination of this Agreement or any license issued thereunder.

ARTICLE XIV  
INSURANCE

(A) Licensee shall carry insurance issued by an insurance carrier satisfactory to Licensor to protect the parties hereto from and against any and all claims, demands, actions, judgements, costs, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly from or by reason of such loss, injury or damage as covered in Article XIII preceding.

(B) The amounts of such insurance, without deductibles:  
(1) against liability due to damage to property shall not be less than \$1,000,000 as to any one occurrence and \$1,000,000 aggregate, and

- (2) against liability due to injury to or death of persons shall be not less than \$3,000,000.00 as to any one person and \$3,000,000.00 as to any one occurrence.
- (C) Licensee shall also carry such insurance as will protect it from all claims under any Workers' Compensation Law in effect that may be applicable to it.
- (D) All insurance must be effective before Licensor will authorize Licensee to make attachments to any pole and shall remain in force until such attachments have been removed from all such poles.
- (E) Licensee shall submit to Licensor certificates of insurance including renewal thereof shown as Form E of Appendix III hereto annexed, by each company insuring Licensee to the effect that it has insured Licensee for all liabilities of Licensee covered by this Agreement; and that such certificates will name the Licensor as an additional insured under the public liability policy and that it will not cancel or change any such policy of insurance issued to Licensee except after the giving of not less than 30 days' written notice to Licensor.

ARTICLE XV  
AUTHORIZATION NOT EXCLUSIVE

Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to Licensee. Licensor shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any pole covered by this Agreement.

ARTICLE XVI  
ASSIGNMENT OF RIGHTS

- (A) Licensee shall not assign or transfer this Agreement or any authorization granted hereunder, and this Agreement shall not inure to the benefit of Licensee's successors, without the prior written consent of Licensor.
- (B) In the event such consent or consents are granted by Licensor, then this Agreement shall extend to and bind the successors and assigns of the parties hereto.
- (C) Pole space licensed to Licensee hereunder is for Licensee's use only, and Licensee shall not lease, sublicense, share with, convey or resell to others any such space or rights granted hereunder.

ARTICLE XVII  
FAILURE TO ENFORCE

Failure of Licensor to enforce or insist upon compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a general waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

ARTICLE XVIII

TERMINATION OF AGREEMENT

- (A) If Licensee shall fail to comply with any of the terms or conditions of this Agreement or default in any of its obligations under this Agreement, or if Licensee's facilities are maintained or used in violation of any law and Licensee shall fail within thirty (30) days after written notice from Licensor to correct such default or noncompliance. Licensor may at its option forthwith terminate this Agreement and all authorizations granted hereunder, or the authorizations covering the poles as to which such default or noncompliance shall have occurred.
- (B) If an insurance carrier shall at any time notify Licensor that the policy or policies of insurance, required under ARTICLE XIV hereof, will be cancelled or changed so that the requirements of ARTICLE XIV will no longer be satisfied, then this Agreement terminates unless prior to the effective date thereof Licensee shall furnish to Licensor certificates of insurance including insurance coverage in accordance with the provisions of ARTICLE XIV hereof.
- (C) In the event of termination of this Agreement Licensee shall remove its attachments from Licensor's poles within six (6) months from date of termination; provided, however, that Licensee shall be liable for and pay all fees pursuant to the terms of this Agreement to Licensor until Licensee's attachments are removed from Licensor's poles.
- (D) If Licensee does not remove its attachments from Licensor's poles within the applicable time periods specified in this Agreement, Licensor shall have the right to remove them at the expense of Licensee and without any liability on the part of Licensor to Licensee therefor; and Licensee shall be liable for and pay all fees pursuant to the terms of this Agreement to Licensor until such attachments are removed.

ARTICLE XIX

TERM OF AGREEMENT

- (A) This Agreement shall remain in effect for a term of five (5) years from the date hereof.

- (B) Termination of this Agreement or any licenses issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination.

ARTICLE XX

NOTICES

All written notices required under this Agreement shall be given by posting the same in first class mail as follows:

To Licensee: Mr. Robert Felder  
Grassroots Cable Systems, Inc.  
Industrial Drive  
Exeter Corporate Park  
P.O. Box 280  
Exeter, New Hampshire 03833

To Licensor: Mr. W. Arthur Fessenden  
Plant Records Supervisor  
Public Service Company of New Hampshire  
P.O. Box 330  
Manchester, New Hampshire 03105

To Licensor: Mr. Joseph Lebrun  
Director Engineering & Construction  
New England Telephone and Telegraph Company  
900 Elm Street, Suite 1805  
Manchester, New Hampshire

This agreement cancels and supersedes any and all previous pole attachment agreements between the Licensors and Licensee insofar as the aforementioned municipalities are concerned except as to liabilities already accrued, if any.

In WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate on the day and year first above written.

GRASSROOTS CABLE SYSTEMS, INC.

By: Maesha B. Felder  
(Name)

Title: Vice President

Date of Execution: 8/10/93

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY

By: Bruce W. Spinney  
(Name) Bruce W. Spinney

Title: Managing Director

Date of Execution: 9/17/93

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: Earl Maynard  
(Name)

Title: v.p.

Date of Execution: June 24, 1993

**EXHIBIT 2**



Northeast Utilities System

PUBLIC SERVICE OF NEW HAMPSHIRE  
031612

AMOUNT PAID

AMOUNT NOW DUE  
\$635,310.77

06 0 1 4 3 07

29601141529 0635310772 0001533563

TIME WARNER CABLE  
ATTN DON JOHNSON  
118 JOHNSON ROAD  
PORTLAND ME 04102

SB

NORTHEAST UTILITIES  
BOX NUMBER 2957  
HARTFORD CT 06104

Please make checks payable to  
**PSNH**

Please Return This Portion With Your Payment

**296011415** | **MAR 16, 2012**

Account Number

Statement Date

PREVIOUS BILL	03/15/12	\$636,844.33
BALANCE FORWARD		\$636,844.33
AMOUNT NOW DUE		\$635,310.77

BILLING FOR POLE ATTACHMENT LICENSES: JAN 01, 2012 - JUN 30, 2012

PSNH DOCUMENT: ALA-316

SEMI-ANNUAL BILL AMOUNT BILLED 1/12/12 \$159,695.31

OUTSTANDING BALANCE AS OF 3/14/12	\$728,159.41
PAYMENT MADE 3/15/12	-102,237.47
	-----
BALANCE	625,921.41
INTEREST @ 1.5%	9,388.83
	-----
OUT STANDING BALANCE AS OF 3/16/12	\$635,310.77
	=====

*4700-*

TERMS: NET 30 DAYS LATE PAYMENT CHARGE OF 1.5% PER MONTH ADDED TO AMOUNT NOT PAID WITHIN 30 DAYS OF BILL DATE. (ANNUAL PERCENTAGE RATE 18%)

AS OF MAR 16, 2012, WE HAD NOT RECEIVED THE PAYMENT DUE ON THIS ACCOUNT.

IF YOUR PAYMENT HAS BEEN MADE, THANK YOU.

ANY QUESTIONS CONCERNING THIS BILL CALL (860)665-2449 OR (800)286-5000, EXT 703-2449, BETWEEN 8 AM AND 4:30 PM, MONDAY THROUGH FRIDAY.



Northeast Utilities System



Northeast Utilities System

PUBLIC SERVICE OF NEW HAMPSHIRE  
011212

AMOUNT PAID  
06 0 1 4 3 07

AMOUNT NOW DUE  
\$709,156.51

29601141529 0709156514 0159695319

TIME WARNER CABLE  
ATTN DON JOHNSON  
118 JOHNSON ROAD  
PORTLAND ME 04102

SB

NORTHEAST UTILITIES  
BOX NUMBER 2957  
HARTFORD CT 06104

Please make checks payable to PSNH

Please Return This Portion With Your Payment

▶ 296011415 JAN 12, 2012

Account Number	Statement Date	PREVIOUS BILL	12/15/11	\$549,461.20
		BALANCE FORWARD		\$549,461.20
		AMOUNT NOW DUE		\$709,156.51

BILLING FOR POLE ATTACHMENT LICENSES: JAN 01, 2012 - JUN 30, 2012

PSNH DOCUMENT: ALA-316

SEMI-ANNUAL BILL AMOUNT \$159,695.31

OUTSTANDING BALANCE ON 12/14	\$541,341.08
INTEREST @ 1.5% AS OF 12/15	8,120.12
TOTAL BALANCE DUE AS OF 12 15	\$549,461.20
NEW TOTAL BALANCE DUE ON 1/12/12	\$709,156.51

14950-1776-31-600-21476 - \$ 159,695.31

OK'D  
2-8-12

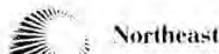
TERMS: NET 30 DAYS LATE PAYMENT CHARGE OF 1.5% PER MONTH ADDED TO AMOUNT NOT PAID WITHIN 30 DAYS OF BILL DATE. (ANNUAL PERCENTAGE RATE 18%)

AS OF JAN 12, 2012, WE HAD NOT RECEIVED THE PAYMENT DUE ON THIS ACCOUNT.

IF YOUR PAYMENT HAS BEEN MADE, THANK YOU.

Also sending to legal to dispute past charges as they were charging us Telcom Rates (DJ)

ANY QUESTIONS CONCERNING THIS BILL CALL (860)665-2449 OR (800)286-5000, EXT 703-2449, BETWEEN 8 AM AND 4:30 PM, MONDAY THROUGH FRIDAY.



**POLE ATTACHMENT INVOICE**  
**01/01/2012 through 06/30/2012**  
**PSNH Document: ALA-316 (TMWR1)**

Time Warner Entertainment Co., L.P.  
 Attn: Don Johnson  
 118 Johnson Rd.  
 Portland, ME 04102

ACCOUNT NUMBER: 296011415

TOWN	TV / INTERNET			Urbanized Communications			Non-Urbanized Communications		
	JOINT	SOLE	TRI	JOINT	SOLE	TRI	JOINT	SOLE	TRI
Albany	546	11							
Ashland	1								
Bath	536	16							
Berlin							2287	55	
Bethlehem							1272	20	
Brookfield	947	2							
Campton	476	65							
Carroll	517	25							
Conway	2590	65							
Dalton							49		
Dummer	1								
Eaton	254	3							
Effingham	1336	54							
Franconia	463	29							
Freedom	1724	54							
Gorham							1009	23	
Jefferson							426	13	
Keene							4403	210	
Lancaster							781	6	
Lisbon/Landaff	529	17							
Littleton	17								
Madison	1890	17							
Marlborough							697	24	
Middleton	998	12							
Milan	1145	18							
Northumberland							1038	20	





Northeast  
Utilities System

PUBLIC SERVICE OF NEW HAMPSHIRE  
052206

AMOUNT PAID

06 0 1 4 3 07

AMOUNT NOW DUE

\$20,725.75

29601127533 0020725758 0000000000

TIME WARNER  
11 EAGLE COURT  
KEENE NH 03431

SB

NORTHEAST UTILITIES  
BOX NUMBER 2957  
HARTFORD CT 06104

Please make checks  
payable to

**PSNH**

Please Return This Portion With Your Payment

**296011275**      **MAY 22, 2006**  
Account Number      Statement Date

PREVIOUS BILL	04/21/06	\$36,929.34
PAYMENT	05/19/06	\$16,203.59 CR
BALANCE FORWARD		\$20,725.75
AMOUNT NOW DUE		\$20,725.75

BILLING FOR POLE ATTACHMENT LICENSES FOR THE PERIOD OF 01/01/06 THRU  
06/30/06

\$36,929.34  
=====

REMINDER BILL - PAST DUE - PAY IMMEDIATELY  
=====

TERMS: NET 30 DAYS LATE PAYMENT CHARGE OF 1.5% PER MONTH ADDED TO  
AMOUNT NOT PAID WITHIN 30 DAYS OF BILL DATE.  
(ANNUAL PERCENTAGE RATE 18%)

**MAY 31 2006**

ANY QUESTIONS CONCERNING THIS BILL CALL (860) 665-2449 OR  
(860)665-2452, BETWEEN 8 AM AND 4:30 PM, MONDAY THROUGH FRIDAY.



Northeast  
Utilities System



Northeast  
Utilities System

AMOUNT PAID

AMOUNT NOW DUE  
\$36,929.34

PUBLIC SERVICE OF NEW HAMPSHIRE  
022106

06 0 1 4 3 07

29601127533 0036929346 0036929346

TIME WARNER  
11 EAGLE COURT  
KEENE NH 03431

SB

NORTHEAST UTILITIES  
BOX NUMBER 2957  
HARTFORD CT 06104

Please make checks  
payable to

PSNH

Please Return This Portion With Your Payment

296011275 Account Number  
FEB 21, 2006 Statement Date

PREVIOUS BILL	06/20/05	\$1,252.39 CR
ADJUSTMENT(DB/CR)	07/19/05	\$1,252.39
BALANCE FORWARD		\$0.00
AMOUNT NOW DUE		\$36,929.34

BILLING FOR POLE ATTACHMENT LICENSES  
PER ATTACHED DETAIL

\$36,929.34  
=====

TERMS: NET 30 DAYS LATE PAYMENT CHARGE OF 1.5% PER MONTH ADDED TO  
AMOUNT NOT PAID WITHIN 30 DAYS OF BILL DATE.  
(ANNUAL PERCENTAGE RATE 18%)

ANY QUESTIONS CONCERNING THIS BILL CALL (860) 665-2449 OR  
(860)665-2452, BETWEEN 8 AM AND 4:30 PM, MONDAY THROUGH FRIDAY.



Northeast  
Utilities System







Northeast  
Utilities System

AMOUNT PAID
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AMOUNT NOW DUE
\$36,929.34

PUBLIC SERVICE OF NEW HAMPSHIRE  
022106 06 0 1 4 3 07

29601127533 0036929346 0036929346

TIME WARNER  
11 EAGLE COURT  
KEENE NH 03431

SB

NORTHEAST UTILITIES  
BOX NUMBER 2957  
HARTFORD CT 06104

Please make checks  
payable to

PSNH

Please Return This Portion With Your Payment

296011275 Account Number	FEB 21, 2006 Statement Date
-----------------------------	--------------------------------

PREVIOUS BILL	06/20/05	\$1,252.39 CR
ADJUSTMENT(DB/CR)	07/19/05	\$1,252.39
BALANCE FORWARD		\$0.00
AMOUNT NOW DUE		\$36,929.34

BILLING FOR POLE ATTACHMENT LICENSES  
PER ATTACHED DETAIL

\$36,929.34  
=====

TERMS: NET 30 DAYS LATE PAYMENT CHARGE OF 1.5% PER MONTH ADDED TO  
AMOUNT NOT PAID WITHIN 30 DAYS OF BILL DATE.  
(ANNUAL PERCENTAGE RATE 18%)

ANY QUESTIONS CONCERNING THIS BILL CALL (860) 665-2449 OR  
(860)665-2452, BETWEEN 8 AM AND 4:30 PM, MONDAY THROUGH FRIDAY.



Northeast  
Utilities System



**Public Service  
of New Hampshire**

60 W. Pennacook Street, Manchester, NH 03101

Public Service Company of New Hampshire  
P.O. Box 330  
Manchester, NH 03105-0330  
(603) 669-4000

December 20, 2005

Time Warner Cable (Paragon)  
11 Eagle Court  
Keene, NH 03431

Dear Sir or Madam:

Per Appendix I, Attachment Fees and Charges of your Aerial License Agreement, this letter is to inform you of a change in our pole attachment fees. The rates below will become effective on January 1, 2006.

ATTACHMENT RATES					
		COMMUNICATIONS			
TV & Internet Joint	4.16	Non-Urbanized Joint	9.48	Urbanized Joint	6.29
TV & Internet Sole	8.31	Non-Urbanized Sole	18.96	Urbanized Sole	12.57
TV & Internet Tri	2.77	Non-Urbanized Tri	6.32	Urbanized Tri	4.19

If you have any questions, please contact John Pearson at (603)634-3511.

Very truly yours,

Thomas C. Mitchell  
Supervisor – Distribution Projects

**EXHIBIT 3**



**Public Service  
of New Hampshire**

780 N. Commercial Street, Manchester, NH 03101

Public Service Company of New Hampshire  
P. O. Box 330  
Manchester, NH 03105-0330  
(603) 634-2459  
Fax (603) 634-2438  
allwacj@psnh.com

The Northeast Utilities System

**Christopher J. Allwarden**  
Senior Counsel

November 18, 2011

VIA CERTIFIED MAIL, RRR

Philip Ripa  
Senior Director of Technical Operations  
Time Warner Entertainment Company L.P.  
118 Johnson Road  
Portland, Maine 04102

Re: Time Warner Outstanding Invoices - Pole Attachment Fees:

<b>Account Number</b>	<b>Amount Due</b>
296343082	\$69,447.20
296011275	\$306,267.15
296011415	\$533,340.97
<b>Total Due as of 11-18-2011</b>	<b>\$909,055.32</b>

Dear Mr. Ripa:

The matter of outstanding, unpaid Public Service Company of New Hampshire (PSNH) invoice amounts billed to Time Warner Entertainment Company, L.P. (Time Warner) for pole attachment fees and late fees for the above noted Accounts has been referred to the Legal Department for collection.

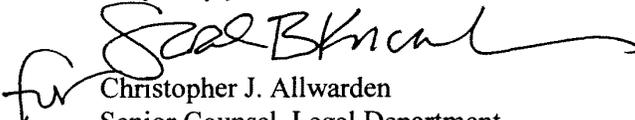
Commencing with pole attachment fee invoices issued to Time Warner under one or more of the above Accounts for 2006, and continuing through 2011, Time Warner has paid only a portion of the invoices. Because Time Warner's attachments are for the purpose of providing telecommunications service, Time Warner is responsible for payment of the rate applicable to attachments used for the provision of telecommunications services. To date, the cumulative amount of unpaid charges, with accrued late fees, due under the above Accounts is \$909,055.32

As a result of Time Warner's non-payment of all amounts due and outstanding, Time Warner is in default of the parties' Pole Attachment Agreement.

-2-

Demand is hereby made upon Time Warner to pay PSNH the total amount due immediately. The failure or refusal of Time Warner to pay said amount to PSNH in full on or before December 15, 2011 will be viewed by PSNH as sufficient cause to pursue any and all legal remedies available to it by law and under the Pole Attachment Agreement with your company. We look forward to your prompt reply with payment in full of the amount due.

Very truly yours,

  
Christopher J. Allwarden  
Senior Counsel, Legal Department

cc: Don Johnson, Construction Manager  
Time Warner Entertainment Company, L.P.  
Robert A. Bersak, Esq.  
David L. Bickford  
Sarah B. Knowlton, Esq.  
Paul E. Ramsey

**EXHIBIT 4**

60 Columbus Circle  
New York, NY 10023  
Tel 212-364-8482  
Fax 704-973-6239  
julie.laine@twcable.com

Julie P. Laine  
Group Vice President & Chief Counsel, Regulatory



January 14, 2011

**VIA OVERNIGHT MAIL**

Mr. John Pearson  
Public Service of New Hampshire  
60 W. Pennacook Street  
Manchester, NH 03101

**Re: Time Warner Cable; Account Number 296011275**

Dear Mr. Pearson:

I write to follow up on earlier correspondence relating to Time Warner Cable's ("TWC") payment of invoices from Public Service Company of New Hampshire ("PSNH") relating to pole attachments in New Hampshire. As we have made clear in response to earlier invoices, TWC's Digital Phone service is a VoIP-based service that has not been classified as a telecommunications service by the Federal Communications Commission. In fact, the FCC has repeatedly declined to classify VoIP as a "telecommunications service." See e.g., *In the Matter of IP-Enabled Services*, 19 F.C.C.R. 4863, 4868, ¶6 (2004) ("[W]e seek comment on the appropriate legal classification of each type of IP-enabled service [including VoIP]."); see also *In the Matter of Time Warner Cable Request for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnections Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, 22 F.C.C.R. 3513, 3520, ¶15 (WCB 2007) ("[W]e need not, and do not, reach here the issues raised in the IP-Enabled Services docket, including the statutory classification of VoIP."). The FCC has also found that where an unclassified service is commingled on attachments with a cable service, the attachments are subject to the FCC Cable Rate. See *Heritage Cablevision*, 6 F.C.C.R. 7099, 7104-05, *recon. dismissed*, 7 F.C.C.R. 4192 (1992), *aff'd sub nom. Texas Util. Elec. Co. v. FCC*, 977 F.2d 925 (D.C. Cir. 1993); *Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 F.C.C.R. 6777, ¶¶ 29 & 34 (1998), *aff'd, National Cable & Telecomm. Ass'n v. Gulf Power Co.*, 534 U.S. 327, 339 (2002). It is therefore clear that TWC is not required to pay a telecommunications rate for attachments used to provide its VoIP service.

Mr. John Pearson  
January 14, 2011  
Page 2

Accordingly, TWC's payments have been and will continue to be based upon calculation and application of the cable attachment rate. We therefore request that PSNH immediately correct its invoices to reflect application of the cable attachment rate.

Please do not hesitate to contact me should you have any questions, and kindly let me know if there is another department at PSNH with whom I should raise this matter.

Sincerely,

A handwritten signature in cursive script that reads "Julie P. Laine". The signature is written in black ink and is positioned above the printed name.

Julie P. Laine

August 6, 2008

**VIA CERTIFIED MAIL**

Mr. John Pearson  
Public Service of New Hampshire  
60 W. Pennacook Street  
Manchester, NH 03101

**Re: Time Warner Cable; Account Number 296011275**

Dear Mr. Pearson:

I write to follow up on earlier correspondence relating to Time Warner Cable's ("TWC") payment of invoices from Public Service Company of New Hampshire ("PSNH") relating to pole attachments in New Hampshire. As we have made clear in response to earlier invoices, TWC's residential Digital Phone service is a VoIP-based service that has not been classified as a telecommunications service by the Federal Communications Commission. Accordingly, TWC's payments have been and will continue to be based upon calculation and application of the cable attachment rate. We therefore request that PSNH immediately correct its invoices to reflect application of the cable attachment rate.

Please do not hesitate to contact me should you have any questions, and kindly let me know if there is another department at PSNH with whom I should raise this matter.

Sincerely,

Julie P. Laine

April 3, 2006

**VIA CERTIFIED MAIL**

Public Service of New Hampshire  
ATTENTION: John Pearson  
60 W. Pennacook Street  
Manchester, NH 03101

**Re: Time Warner Cable; Account Number 296011275**

Dear Mr. Pearson:

Enclosed please find payment in the amount of \$16,203.59, covering Time Warner Cable ("TWC") pole attachments in New Hampshire for the period from July 1, 2005 through December 31, 2005. TWC's residential Digital Phone service is a VoIP-based service that has not been classified as a telecommunications service by the Federal Communications Commission. Accordingly, the enclosed payment in the amount of \$16,203.59 is based upon calculation and application of the cable attachment rate.

Please do not hesitate to contact me should you have any questions.

Sincerely,

Julie Y. Patterson

Enclosure

**ATTACHMENT B**

**47 CFR § 1.1409 (Current FCC Rule)**

**§ 1.1409 Commission consideration of the complaint.**

(a) In its consideration of the complaint, response, and reply, the Commission may take notice of any information contained in publicly available filings made by the parties and may accept, subject to rebuttal, studies that have been conducted. The Commission may also request that one or more of the parties make additional filings or provide additional information. Where one of the parties has failed to provide information required to be provided by these rules or requested by the Commission, or where costs, values or amounts are disputed, the Commission may estimate such costs, values or amounts it considers reasonable, or may decide adversely to a party who has failed to supply requested information which is readily available to it, or both.

(b) The complainant shall have the burden of establishing a *prima facie* case that the rate, term, or condition is not just and reasonable or that the denial of access violates 47 U.S.C. §224(f). If, however, a utility argues that the proposed rate is lower than its incremental costs, the utility has the burden of establishing that such rate is below the statutory minimum just and reasonable rate. In a case involving a denial of access, the utility shall have the burden of proving that the denial was lawful, once a *prima facie* case is established by the complainant.

(c) The Commission shall determine whether the rate, term or condition complained of is just and reasonable. For the purposes of this paragraph, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(d) The Commission shall deny the complaint if it determines that the complainant has not established a *prima facie* case, or that the rate, term or condition is just and reasonable, or that the denial of access was lawful.

**47 CFR § 1.1409 (Current FCC Rule)**

(e) When parties fail to resolve a dispute regarding charges for pole attachments and the Commission's complaint procedures under Section 1.1404 are invoked, the Commission will apply the following formulas for determining a maximum just and reasonable rate:

(1) The following formula shall apply to attachments to poles by cable operators providing cable services. This formula shall also apply to attachments to poles by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services until February 8, 2001:

$$\text{Maximum Rate} = \text{Space Factor} \times \frac{\text{Net Cost of a Bare Pole}}{\text{Carrying Charge Rate}}$$

Where

$$\text{Space Factor} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}}$$

(2) With respect to attachments to poles by any telecommunications carrier or cable operator providing telecommunications services, the maximum just and reasonable rate shall be the higher of the rate yielded by paragraphs (e)(2)(i) or (e)(2)(ii) of this section.

(i) The following formula applies to the extent that it yields a rate higher than that yielded by the applicable formula in paragraph 1.1409(e)(2)(ii) of this section:

$$\text{Rate} = \text{Space Factor} \times \text{Cost}$$

Where Cost

$$\text{in Urbanized Service Areas} = 0.66 \times (\text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate})$$

$$\text{in Non-Urbanized Service Areas} = 0.44 \times (\text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}).$$

$$\text{Where Space Factor} = \frac{\left( \frac{\text{Space Occupied}}{\text{Pole Height}} + \left( \frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}} \right) \right)}{\text{Pole Height}}$$

(ii) The following formula applies to the extent that it yields a rate higher than that yielded by the applicable formula in paragraph 1.1409(e)(2)(i) of this section:

$$\text{Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \left[ \frac{\text{Maintenance and Administrative}}{\text{Carrying Charge Rate}} \right]$$

$$\text{Where Space Factor} = \frac{\left( \frac{\text{Space Occupied}}{\text{Pole Height}} + \left( \frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}} \right) \right)}{\text{Pole Height}}$$

(3) The following formula shall apply to attachments to conduit by cable operators and telecommunications carriers:

**47 CFR § 1.1409 (Current FCC Rule)**

$$\begin{array}{l} \text{Maximum} \\ \text{Rate per} \\ \text{Linear ft./m.} \end{array} = \left[ \frac{1}{\text{Number of Ducts}} \times \frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \right] \times \left[ \frac{\text{No. of Ducts}}{\text{Ducts}} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \begin{array}{l} \text{Carrying} \\ \text{Charge} \\ \text{Rate} \end{array}$$

(Percentage of Conduit Capacity)                      (Net Linear Cost of a Conduit)

simplified as:

$$\begin{array}{l} \text{Maximum Rate} \\ \text{Per Linear ft./m.} \end{array} = \frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \times \begin{array}{l} \text{Carrying} \\ \text{Charge} \\ \text{Rate} \end{array}$$

If no inner-duct is installed the fraction, "1 Duct divided by the No. of Inner-Ducts" is presumed to be 1/2.

(f) Paragraph (e)(2) of this section shall become effective February 8, 2001 (i.e., five years after the effective date of the Telecommunications Act of 1996). Any increase in the rates for pole attachments that results from the adoption of such regulations shall be phased in over a period of five years beginning on the effective date of such regulations in equal annual increments. The five-year phase-in is to apply to rate increases only. Rate reductions are to be implemented immediately. The determination of any rate increase shall be based on data currently available at the time of the calculation of the rate increase.

[43 FR 36094, Aug. 15, 1978, as amended at 52 FR 31770, Aug. 24, 1987; 61 FR 43025, Aug. 20, 1996; 61 FR 45619, Aug. 29, 1996; 63 FR 12025, Mar. 12, 1998; 65 FR 31282, May 17, 2000; 66 FR 34580, June 29, 2001; 76 FR 26639, May 9, 2011]

## 47 CFR § 1.1409 (Superseded FCC Rule)

provided by these rules or requested by the Commission, or where costs, values or amounts are disputed, the Commission may estimate such costs, values or amounts it considers reasonable, or may decide adversely to a party who has failed to supply requested information which is readily available to it, or both.

(b) The complainant shall have the burden of establishing a *prima facie* case that the rate, term, or condition is not just and reasonable or that the denial of access violates 47 U.S.C. §224(f). If, however, a utility argues that the proposed rate is lower than its incremental costs, the utility has the burden of establishing that such rate is below the statutory minimum just and reasonable rate. In a case involving a denial of access, the utility shall have the burden of proving that the denial was lawful, once a *prima facie* case is established by the complainant.

(c) The Commission shall determine whether the rate, term or condition complained of is just and reasonable. For the purposes of this paragraph, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(d) The Commission shall deny the complaint if it determines that the complainant has not established a *prima facie* case, or that the rate, term or condition is just and reasonable, or that the denial of access was lawful.

## § 1.1409 Commission consideration of the complaint.

(a) In its consideration of the complaint, response, and reply, the Commission may take notice of any information contained in publicly available filings made by the parties and may accept, subject to rebuttal, studies that have been conducted. The Commission may also request that one or more of the parties make additional filings or provide additional information. Where one of the parties has failed to provide information required to be

(e) When parties fail to resolve a dispute regarding charges for pole attachments and the Commission's complaint procedures under Section 1.1404 are invoked, the Commission will apply the following formulas for determining a maximum just and reasonable rate:

(1) The following formula shall apply to attachments to poles by cable operators providing cable services. This formula shall also apply to attachments to poles by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services until February 8, 2001:

$$\text{Maximum Rate} = \text{Space Factor} \times \frac{\text{Net Cost of}}{\alpha \text{ Bare Pole}} \times \frac{\text{Carrying}}{\text{Charge Rate}}$$

$$\text{Where} \\ \text{Space Factor} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}}$$

## 47 CFR § 1.1409 (Superseded FCC Rule)

(2) Subject to paragraph (f) of this section the following formula shall apply to attachments to poles by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services beginning February 8, 2001:

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \left[ \begin{array}{c} \text{Carrying} \\ \text{Charge} \\ \text{Rate} \end{array} \right]$$

$$\text{Where Space Factor} = \left[ \frac{\left( \frac{\text{Space Occupied}}{\text{Pole Height}} \right) + \left( \frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}} \right)}{\text{Pole Height}} \right]$$

(3) The following formula shall apply to attachments to conduit by cable operators and telecommunications carriers:

$$\begin{array}{l} \text{Maximum} \\ \text{Rate per} \\ \text{Linear ft./m.} \end{array} = \left[ \frac{1}{\text{Number of Ducts}} \times \frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \right] \times \left[ \frac{\text{No. of Ducts}}{\text{System Duct Length (ft./m.)}} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \begin{array}{c} \text{Carrying} \\ \text{Charge} \\ \text{Rate} \end{array}$$

(Percentage of Conduit Capacity)                      (Net Linear Cost of a Conduit)

simplified as:

$$\begin{array}{l} \text{Maximum Rate} \\ \text{Per Linear ft./m.} \end{array} = \frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \times \begin{array}{c} \text{Carrying} \\ \text{Charge} \\ \text{Rate} \end{array}$$

If no inner-duct is installed the fraction, "1 Duct divided by the No. of Inner-Ducts" is presumed to be 1/2.

(f) Paragraph (e)(2) of this section shall become effective February 8, 2001 (i.e., five years after the effective date of the Telecommunications Act of 1996). Any increase in the rates for pole attachments that results from the adoption of such regulations shall be phased in over a period of five years beginning on the effective date of such regulations in equal annual increments. The five-year phase-in is to apply to rate increases only. Rate reductions are to be implemented immediately. The determination of any rate increase shall be based on data currently available at the time of the calculation of the rate increase.

[43 FR 36094, Aug. 15, 1978, as amended at 52 FR 31770, Aug. 24, 1987; 61 FR 43025, Aug. 20, 1996; 61 FR 45619, Aug. 29, 1996; 63 FR 12025, Mar. 12, 1998; 65 FR 31282, May 17, 2000; 66 FR 34580, June 29, 2001]

**ATTACHMENT C**

# The State of New Hampshire

SUPERIOR COURT

MERRIMACK COUNTY

(x) COURT

( ) JURY

WRIT OF SUMMONS

Public Service Company of New Hampshire  
780 North Commercial Street  
Manchester, New Hampshire 03101

v. Time Warner Entertainment Company, L.P.  
60 Columbus Circle  
New York, New York 10023

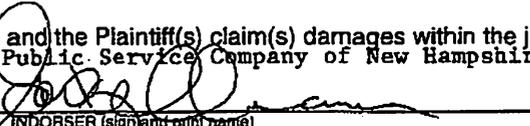
The Sheriff or Deputy of any County is ordered to summon each defendant to file a written appearance with the Superior Court at the address listed below by the return day of this writ which is the first Tuesday of March, 2012

YEAR

MONTH

The PLAINTIFF(S) state(s): See attached declaration.

and the Plaintiff(s) claim(s) damages within the jurisdictional limits of this Court.  
Public Service Company of New Hampshire

  
INDORSER (sign and print name)

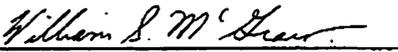
George W. Kellermann

1/31/12  
DATE OF WRIT

**NOTICE TO THE DEFENDANT**

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

TINA L. NADEAU  
Witness, ~~ROBERT J. LYMAN~~, Chief Justice, Superior Court.

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

  
SIGNATURE OF PLAINTIFF/ATTORNEY  
Charles P. Bauer, Esquire (NH Bar #208)  
PRINTED/TYPED NAME  
Gallagher, Callahan & Gartrell, P.C.  
214 North Main St., P.O. Box 1415  
ADDRESS  
Concord, NH 03302-1415 / 603-228-1181  
PHONE

**RETURN OF SERVICE**

\_\_\_\_\_ COUNTY \_\_\_\_\_ DATE \_\_\_\_\_, 20 \_\_\_\_\_

I summoned the within named \_\_\_\_\_ by

giving in hand to \_\_\_\_\_

leaving at the abode of \_\_\_\_\_

at \_\_\_\_\_

an attested copy of this Writ/Petition to Attach at \_\_\_\_\_ a.m./p.m. this date.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
AGENCY

FEES: Service: \$ \_\_\_\_\_

Travel: \_\_\_\_\_

Other: \_\_\_\_\_

TOTAL: \$ \_\_\_\_\_

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

v.

TIME WARNER ENTERTAINMENT COMPANY, L.P.

**VERIFIED DECLARATION**

**PARTIES**

1. Public Service Company of New Hampshire ("PSNH") is a New Hampshire corporation having a principal place of business at 780 N. Commercial Street, Manchester, NH 03101. PSNH is an electric utility that generates, transmits, distributes, and sells electricity to customers throughout the State of New Hampshire. PSNH owns and controls utility poles located throughout the State of New Hampshire that are used by PSNH for the distribution of electricity to the homes and business of PSNH electricity customers.

2. Time Warner Entertainment Company, L.P. ("Time Warner") is a Delaware limited partnership with a principal place of business at 60 Columbus Circle, New York, New York 10023. Time Warner provides cable television, internet and telecommunication services, including voice and telephone services, to its customers throughout the State of New Hampshire. Time Warner transmits, distributes, and sells its services to its customers throughout the State of New Hampshire through its cable lines which are attached to PSNH's utility poles. Time Warner and PSNH are parties to a contract or contracts governing

Time Warner's attachments to, and use of, PSNH's utility poles in the State of New Hampshire pursuant to a Pole Attachment Agreement dated February 6, 2004.

3. The registered agent for Time Warner in the State of New Hampshire is C. T. Corporation System, 9 Capitol Street, Concord, NH 03301.

#### **JURISDICTION AND VENUE**

4. Jurisdiction and venue in this civil action are proper in Merrimack County Superior Court. NH RSA 491:7 and §15.5 of the Pole Attachment Agreement (parties have agreed to subject matter and personal jurisdiction in this county court of competent jurisdiction).

#### **FACTS**

7. PSNH and Time Warner are parties to a contract or contracts governing Time Warner's attachment to, and use of, PSNH's utility poles.

8. Time Warner is contractually obligated to pay to PSNH annual pole attachment fees and charges.

9. Time Warner is contractually obligated to pay to PSNH late payment fees on outstanding balances due.

10. Time Warner is contractually obligated to pay to PSNH legal fees and costs in connection with this civil action.

11. Time Warner has failed and refused to pay to PSNH its contractual obligations for pole attachment fees, charges and accruing late payment fees under the aforesaid Pole Attachment Agreement.

12. PSNH has fulfilled its contractual obligations to Time Warner and has notified Time Warner of its breach of contract and demanded payment by Time Warner of all pole attachment fees, charges, and late payment fees to PSNH.

13. As of January 16, 2012, Time Warner owes PSNH \$1,096,226.20, and this obligation will continue to increase until Time Warner makes full payment to PSNH.

14. Time Warner and PSNH continue to be contractually obligated pursuant to said Pole Attachment Agreement.

**COUNT I: Breach of Contract**

15. In a plea of assumpsit, all factual allegations contained in the preceding paragraphs 1 thru 14 above are repeated and incorporated by reference into this Count I.

16. PSNH has performed its contractual obligations to Time Warner pursuant to the aforesaid Pole Attachment Agreement.

17. Time Warner has breached its contractual obligations to PSNH by failing and refusing to pay to PSNH all pole attachment fees and charges, as well as accrued late payment fees on outstanding balances, despite notice and demand of the same by PSNH.

18. As a direct result of Time Warner's breach of contract, PSNH has suffered damages within the jurisdictional limits of this Court, and is entitled to \$1,096,226.20, plus costs, interest, attorney's fees, and continuing damages, and other relief as may be proper and just.

**COUNT II: Debt**

19. In a plea of debt, all factual allegations contained in the preceding paragraphs 1 thru 18 above are repeated and incorporated by reference into this Count II.

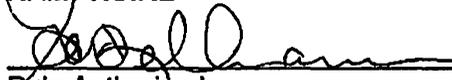
20. PSNH has performed its contractual obligations to Time Warner and has notified and demanded Time Warner to pay its debt due to PSNH pursuant to the Pole Attachment Agreement.

21. Time Warner is indebted to PSNH in the amount of \$1,096,226.20 as of January 16, 2012 and said debt will continue to accrue in the future until paid in full.

22. As a direct result of Time Warner's debt to PSNH, PSNH has suffered damages within the jurisdictional limits of this Court, and is entitled to \$1,096,226.20, plus costs, interest, attorney's fees, and continuing damages, and other relief as may be proper and just.

Respectfully submitted,

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

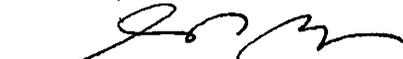
  
\_\_\_\_\_  
Duly Authorized

Dated: January 31, 2012

and

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

By Its Attorneys,  
**GALLAGHER, CALLAHAN & GARTRELL,  
PROFESSIONAL CORPORATION**  
214 North Main Street P.O. Box 1415,  
Concord, NH 03302-1415 Tel. (603) 228-1181

  
\_\_\_\_\_  
Charles P. Bauer, Esq. (NH Bar #208)

Dated: January 31, 2012



**CT Corporation**

**Service of Process  
Transmittal**

02/09/2012

CT Log Number 519950250

**TO:** Jeff Zimmerman, SVP & Asst. General Counsel  
Time Warner Cable  
60 Columbus Circle  
New York, NY 10023

**RE: Process Served in New Hampshire**

**FOR:** Time Warner Entertainment Company, L.P. (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Public Service Company of New Hampshire, Pltf. vs. Time Warner Entertainment Company, L.P., Dft.

**DOCUMENT(S) SERVED:** Receipt of Writ, Writ of Summons, Return of Service, Verified Declaration, Affidavit of Service

**COURT/AGENCY:** Merrimack County Superior Court, NH  
Case # 2172012CV00080

**NATURE OF ACTION:** Monies Due and Owning - Equipment Rendered - Non-payment for utility pole attachment fees and charges as per a Pole Attachment Agreement dated February 6, 2004

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Concord, NH

**DATE AND HOUR OF SERVICE:** By Process Server on 02/09/2012 at 09:55

**JURISDICTION SERVED :** New Hampshire

**APPEARANCE OR ANSWER DUE:** By the first Tuesday of March 2012 (03-06-12)

**ATTORNEY(S) / SENDER(S):** Charles P. Bauer, Esq.  
Gallagher, Callahan & Gartrell, Professional Corporation  
214 North Main Street  
P. O. Box 1415  
Concord, NH 03302-1415  
603-228-1181

**ACTION ITEMS:** CT has retained the current log, Retain Date: 02/09/2012, Expected Purge Date: 02/14/2012  
Image SOP  
Email Notification, Jeff Zimmerman jeff.zimmerman@twcable.com

**SIGNED:** C T Corporation System  
**PER:** Amy McLaren  
**ADDRESS:** 9 Capitol Street  
Concord, NH 03301  
**TELEPHONE:** 800-592-9023

Page 1 of 1 / DF

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

**Merrimack County Sheriff's Office**

SHERIFF SCOTT E. HILLIARD  
333 Daniel Webster Hwy  
Boscawen, NH 03303  
Phone: 603-796-6600

//

TIME WARNER ENTERTAINMENT COMPANY, L.P.  
9 CAPITOL ST  
CONCORD, NH 03301

AFFIDAVIT OF SERVICE

MERRIMACK, SS

February 9, 2012

I, Sergeant BRENDAN S MERCHANT, on this day at 0955 0 a.m./p.m.,  
summoned the within named defendant TIME WARNER ENTERTAINMENT COMPANY, L.P.  
by leaving at the office of Registered Agent CT Corporation, 29 School  
Street, Concord, said County and State of New Hampshire, its true and  
lawful agent for the service of process under and by virtue of Chapter  
293-A, NH RSA as amended, a true copy of this RECEIPT OF WRIT.

FEES

Service	\$25.00
Postage	1.00
Travel	15.00
TOTAL	<u>\$41.00</u>

  
Sergeant BRENDAN S MERCHANT  
Merrimack County Sheriff's Office

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH**

Merrimack Superior Court  
163 North Main St./PO Box 2880  
Concord NH 03302-2880

Telephone: (603) 225-5501  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**RECEIPT OF WRIT**

**Case Name: Public Service Company of New Hampshire v Time Warner Entertainment  
Company, L.P.**  
**Case Number: 217-2012-CV-00080**

The writ in the above-captioned matter was filed with the Clerk of this Court on: February 01, 2012 at 1:25 p.m.

Public Service Company of New Hampshire or his/her attorney is to attach a copy of this Receipt to identical copies of the original writ and deliver them to the Sheriff or other legally authorized entity for service on Time Warner Entertainment Company, L.P.. Sufficient copies shall be provided to allow for a service copy for each named defendant and a copy for each officer completing service to complete the return. The return copies shall be filed with the Court in accordance with Superior Court Rule 3.

BY ORDER OF THE COURT

February 03, 2012

William S. McGraw  
Clerk of Court

(484)

**ATTACHMENT D**

United States District Court  
for the District of New Hampshire

Public Service Company of New Hampshire	
Plaintiff	
vs.	
Time Warner Entertainment Company, L.P.	Civil Action No.
Defendant	

**Notice of Removal**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that the Defendant Time Warner Entertainment Company, L.P. hereby removes to this Court the state court action described below:

1. On February 1<sup>st</sup>, 2012 an action was commenced in the Superior Court of the State of New Hampshire in and for the County of Merrimack, entitled Public Service Company of New Hampshire, Plaintiffs, vs. Time Warner Entertainment Company, L.P., Defendants, Case Number 217-2012-CV-00080. A copy of the Writ of Summons and Verified Declaration commencing that action is attached hereto as Exhibit "A".

2. The first date upon which Defendant Time Warner Entertainment Company, L.P. ("Time Warner") received a copy of the said complaint was February 9, 2012 when Defendant was served with a copy of the Verified Declaration, Writ of Summons, Return of Service and Affidavit of Service from the state court. A copy of the Service of Process Transmittal and Affidavit of Service are attached hereto as Exhibit "B".

3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332, and is one which Time Warner may remove to this Court pursuant to 28 U.S.C. § 1441(b) in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. *See* Exhibit A at p. 3 ¶ 13 & p. 4 ¶ 22 (Plaintiff claims actual damages of \$1,096,226.20).

4. Complete diversity of citizenship exists in that: Plaintiff Public Service Company of New Hampshire is a New Hampshire corporation having a principal place of business at 780 N. Commercial Street, Manchester, NH 03101 and Defendant Time Warner Entertainment Company, L.P. is Delaware limited partnership with a principal place of business at 60 Columbus Circle, New York, New York 10023 and is the only Defendant that has been served with Writ of Summons and Verified Declaration of this action.

5. Pursuant to 28 U.S.C. §1446(d), the Defendant has, this day, sent a copy of this Notice of Removal to the Merrimack County Superior Court by overnight mail delivery, and has sent a copy to counsel for PSNH by overnight mail delivery.

Wherefore, the Defendant respectfully requests that the above-described action now pending in the Merrimack County Superior Court be removed to this Court.

Respectfully submitted,

TIME WARNER ENTERTAINMENT  
COMPANY, L.P.

By its attorneys,

Pierce Atwood LLP

Dated: March 12, 2012

/s/ David A. Anderson

David A Anderson

NH Bar No. 12560

Michele Kenney

NH Bar No. 19333

Pierce Atwood LLP

Pease International Tradeport

One New Hampshire Avenue, Suite 350

Portsmouth, NH 03801

(603) 433-6300

Email: [danderson@pierceatwood.com](mailto:danderson@pierceatwood.com)

Email: [mkenney@pierceatwood.com](mailto:mkenney@pierceatwood.com)

Of Counsel:

Robert G. Scott, Jr.

Maria T. Browne

Davis Wright Tremaine LLP

1919 Pennsylvania Avenue, NW, Suite 800

Washington, DC 20006-3401

### **Certificate of Service**

I hereby certify that a copy of the foregoing Notice of Removal was served on the following on this 12<sup>th</sup> day of March, 2012, and in the manner specified herein:

Electronically Served Through ECF:

Charles P. Bauer, Esquire

Gallagher, Callahan & Gartrell, P.C.

214 North Main Street

P.O. Box 1415

Concord, NH 03302-1415

/s/ David A. Anderson

David A. Anderson

**ATTACHMENT E**

THIS FILING IS	
Item 1: <input checked="" type="checkbox"/> An Initial (Original) Submission	OR <input type="checkbox"/> Resubmission No. _____

Form 1 Approved  
 OMB No. 1902-0021  
 (Expires 12/31/2011)  
 Form 1-F Approved  
 OMB No. 1902-0029  
 (Expires 12/31/2011)  
 Form 3-Q Approved  
 OMB No. 1902-0205  
 (Expires 1/31/2012)



## FERC FINANCIAL REPORT

### FERC FORM No. 1: Annual Report of Major Electric Utilities, Licensees and Others and Supplemental Form 3-Q: Quarterly Financial Report

These reports are mandatory under the Federal Power Act, Sections 3, 4(a), 304 and 309, and 18 CFR 141.1 and 141.400. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider these reports to be of confidential nature

<b>Exact Legal Name of Respondent (Company)</b> Public Service Company of New Hampshire	<b>Year/Period of Report</b> End of <u>2010/Q4</u>
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FERC FORM No.1/3-Q (REV. 02-04)

Name of Respondent		This Report Is:	Date of Report	Year/Period of Report
Public Service Company of New Hampshire		(1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	(Mo, Da, Yr) 04/18/2011	End of <u>2010/Q4</u>
<b>ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)</b>				
Line No.	Account (a)	Balance Beginning of Year (b)	Additions (c)	
47	3. TRANSMISSION PLANT			
48	(350) Land and Land Rights	18,162,613	4,590,892	
49	(352) Structures and Improvements	19,051,141	-2,539,828	
50	(353) Station Equipment	216,015,400	15,475,653	
51	(354) Towers and Fixtures	10,905,711		
52	(355) Poles and Fixtures	86,240,756	7,793,306	
53	(356) Overhead Conductors and Devices	53,647,003	3,709,827	
54	(357) Underground Conduit			
55	(358) Underground Conductors and Devices			
56	(359) Roads and Trails	717,435	6,469	
57	(359.1) Asset Retirement Costs for Transmission Plant	8,826		
58	TOTAL Transmission Plant (Enter Total of lines 48 thru 57)	404,748,885	29,036,319	
59	4. DISTRIBUTION PLANT			
60	(360) Land and Land Rights	4,348,500	98,635	
61	(361) Structures and Improvements	12,855,135	1,449,629	
62	(362) Station Equipment	153,217,227	13,064,502	
63	(363) Storage Battery Equipment			
64	(364) Poles, Towers, and Fixtures	198,897,077	11,489,521	
65	(365) Overhead Conductors and Devices	295,337,069	19,216,563	
66	(366) Underground Conduit	17,064,802	990,225	
67	(367) Underground Conductors and Devices	90,215,252	4,188,308	
68	(368) Line Transformers	189,714,024	10,926,010	
69	(369) Services	105,618,704	6,422,302	
70	(370) Meters	60,291,704	1,853,844	
71	(371) Installations on Customer Premises	4,900,328	235,812	
72	(372) Leased Property on Customer Premises			
73	(373) Street Lighting and Signal Systems	6,230,712	186,796	
74	(374) Asset Retirement Costs for Distribution Plant	309,483	10,412	
75	TOTAL Distribution Plant (Enter Total of lines 60 thru 74)	1,139,000,017	70,132,559	
76	5. REGIONAL TRANSMISSION AND MARKET OPERATION PLANT			
77	(380) Land and Land Rights			
78	(381) Structures and Improvements			
79	(382) Computer Hardware			
80	(383) Computer Software			
81	(384) Communication Equipment			
82	(385) Miscellaneous Regional Transmission and Market Operation Plant			
83	(386) Asset Retirement Costs for Regional Transmission and Market Oper			
84	TOTAL Transmission and Market Operation Plant (Total lines 77 thru 83)			
85	6. GENERAL PLANT			
86	(389) Land and Land Rights	3,909,123		
87	(390) Structures and Improvements	63,298,421	5,094,698	
88	(391) Office Furniture and Equipment	21,197,498	1,297,499	
89	(392) Transportation Equipment	16,893,166	4,498,856	
90	(393) Stores Equipment	460,990	791,488	
91	(394) Tools, Shop and Garage Equipment	8,325,816	801,205	
92	(395) Laboratory Equipment	3,602,791	380,484	
93	(396) Power Operated Equipment	193,530	7,124	
94	(397) Communication Equipment	50,670,071	4,124,047	
95	(398) Miscellaneous Equipment	1,609,263	56,761	
96	SUBTOTAL (Enter Total of lines 86 thru 95)	170,160,669	17,052,162	
97	(399) Other Tangible Property			
98	(399.1) Asset Retirement Costs for General Plant	29,952		
99	TOTAL General Plant (Enter Total of lines 96, 97 and 98)	170,190,621	17,052,162	
100	TOTAL (Accounts 101 and 106)	2,405,275,413	152,654,501	
101	(102) Electric Plant Purchased (See Instr. 8)			
102	(Less) (102) Electric Plant Sold (See Instr. 8)			
103	(103) Experimental Plant Unclassified			
104	TOTAL Electric Plant in Service (Enter Total of lines 100 thru 103)	2,405,275,413	152,654,501	

Name of Respondent Public Service Company of New Hampshire		This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission		Date of Report (Mo, Da, Yr) 04/18/2011	Year/Period of Report End of 2010/Q4
ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)					
Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No.
					47
249	36,817		22,790,073		48
5,218			16,506,095		49
2,285,170		14,858	229,220,741		50
			10,905,711		51
139,022			93,895,040		52
151,194			57,205,636		53
					54
					55
			723,904		56
			8,826		57
2,580,853	36,817	14,858	431,256,026		58
					59
			4,447,135		60
25,703			14,279,061		61
602,992		17,331	165,696,068		62
					63
1,543,882			208,842,716		64
3,522,772			311,030,860		65
-22,822			18,077,849		66
1,072,902			93,330,658		67
3,108,642		-17,331	197,514,061		68
821,445			111,219,561		69
727,183			61,418,365		70
281,372			4,854,768		71
					72
195,335			6,222,173		73
			319,895		74
11,879,406			1,197,253,170		75
					76
					77
					78
					79
					80
					81
					82
					83
					84
					85
			3,909,123		86
179,469			68,213,650		87
569,470		-4,196	21,921,331		88
369,045			21,022,977		89
23,026			1,229,452		90
72,696			9,054,325		91
86,713			3,896,562		92
			200,654		93
386,414			54,407,704		94
23,836			1,642,188		95
1,710,669		-4,196	185,497,966		96
					97
			29,952		98
1,710,669		-4,196	185,527,918		99
32,749,757	36,817		2,525,216,974		100
					101
					102
					103
32,749,757	36,817		2,525,216,974		104

THIS FILING IS	
Item 1: <input checked="" type="checkbox"/> An Initial (Original) Submission	OR <input type="checkbox"/> Resubmission No. _____

Form 1 Approved  
 OMB No. 1902-0021  
 (Expires 7/31/2008)  
 Form 1-F Approved  
 OMB No. 1902-0029  
 (Expires 6/30/2007)  
 Form 3-Q Approved  
 OMB No. 1902-0205  
 (Expires 6/30/2007)



## FERC FINANCIAL REPORT

### FERC FORM No. 1: Annual Report of Major Electric Utilities, Licensees and Others and Supplemental Form 3-Q: Quarterly Financial Report

These reports are mandatory under the Federal Power Act, Sections 3, 4(a), 304 and 309, and 18 CFR 141.1 and 141.400. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider these reports to be of confidential nature

<b>Exact Legal Name of Respondent (Company)</b> Public Service Company of New Hampshire	<b>Year/Period of Report</b> End of <u>2006/Q4</u>
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Name of Respondent Public Service Company of New Hampshire		This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 05/18/2007	Year/Period of Report End of 2006/Q4
<b>ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)</b>				
Line No.	Account (a)	Balance Beginning of Year (b)	Additions (c)	
47	3. TRANSMISSION PLANT			
48	(350) Land and Land Rights	16,801,805		1,084,486
49	(352) Structures and Improvements	4,563,986		418,433
50	(353) Station Equipment	83,052,160		15,223,411
51	(354) Towers and Fixtures	11,310,982		-9,840
52	(355) Poles and Fixtures	46,268,745		9,068,446
53	(356) Overhead Conductors and Devices	34,029,339		2,381,799
54	(357) Underground Conduit			
55	(358) Underground Conductors and Devices			
56	(359) Roads and Trails	710,098		
57	(359.1) Asset Retirement Costs for Transmission Plant	33,754		-18,064
58	TOTAL Transmission Plant (Enter Total of lines 48 thru 57)	196,770,869		28,148,671
59	4. DISTRIBUTION PLANT			
60	(360) Land and Land Rights	4,062,851		-25,279
61	(361) Structures and Improvements	7,534,172		2,706,287
62	(362) Station Equipment	95,678,581		7,232,494
63	(363) Storage Battery Equipment			
64	(364) Poles, Towers, and Fixtures	176,272,009		2,212,033
65	(365) Overhead Conductors and Devices	221,405,111		15,277,298
66	(366) Underground Conduit	14,428,124		743,037
67	(367) Underground Conductors and Devices	75,769,129		4,964,513
68	(368) Line Transformers	158,727,213		9,466,248
69	(369) Services	76,750,136		12,114,193
70	(370) Meters	54,521,761		3,488,967
71	(371) Installations on Customer Premises	5,589,142		295,091
72	(372) Leased Property on Customer Premises			
73	(373) Street Lighting and Signal Systems	5,702,852		317,390
74	(374) Asset Retirement Costs for Distribution Plant	566,883		-58,188
75	TOTAL Distribution Plant (Enter Total of lines 60 thru 74)	897,007,964		58,734,084
76	5. REGIONAL TRANSMISSION AND MARKET OPERATION PLANT			
77	(380) Land and Land Rights			
78	(381) Structures and Improvements			
79	(382) Computer Hardware			
80	(383) Computer Software			
81	(384) Communication Equipment			
82	(385) Miscellaneous Regional Transmission and Market Operation Plant			
83	(386) Asset Retirement Costs for Regional Transmission and Market Oper			
84	TOTAL Transmission and Market Operation Plant (Total lines 77 thru 83)			
85	6. GENERAL PLANT			
86	(389) Land and Land Rights	4,469,134		-559,986
87	(390) Structures and Improvements	47,062,826		562,344
88	(391) Office Furniture and Equipment	19,227,717		756,963
89	(392) Transportation Equipment	487,840		
90	(393) Stores Equipment	550,101		45,954
91	(394) Tools, Shop and Garage Equipment	6,427,556		292,815
92	(395) Laboratory Equipment	3,209,025		53,172
93	(396) Power Operated Equipment			1,932
94	(397) Communication Equipment	29,468,054		-1,495,656
95	(398) Miscellaneous Equipment	764,290		88,780
96	SUBTOTAL (Enter Total of lines 86 thru 95)	111,666,543		-253,682
97	(399) Other Tangible Property			
98	(399.1) Asset Retirement Costs for General Plant	21,906		-1,899
99	TOTAL General Plant (Enter Total of lines 96, 97 and 98)	111,688,449		-255,581
100	TOTAL (Accounts 101 and 106)	1,727,761,578		181,470,907
101	(102) Electric Plant Purchased (See Instr. 8)			
102	(Less) (102) Electric Plant Sold (See Instr. 8)			
103	(103) Experimental Plant Unclassified			
104	TOTAL Electric Plant in Service (Enter Total of lines 100 thru 103)	1,727,761,578		181,470,907

Name of Respondent Public Service Company of New Hampshire		This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission		Date of Report (Mo, Da, Yr) 05/18/2007	Year/Period of Report End of 2006/Q4
ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)					
Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No.
					47
		9,939	17,896,230		48
98,361			4,884,058		49
2,701,904		-506,717	95,066,950		50
-931		-5,377	11,296,696		51
637,432		-15,794	54,683,965		52
580,283		-18,742	35,812,113		53
					54
					55
			710,098		56
			15,690		57
4,017,049		-536,691	220,365,800		58
					59
	-77	-9,939	4,027,556		60
41,193			10,199,266		61
640,627		588,387	102,858,835		62
					63
-10,673,421		22,231	189,179,694		64
2,689,578		121,343	234,114,174		65
20,172			15,150,989		66
390,223			80,343,419		67
343,858		-81,671	167,767,932		68
4,273,467			84,590,862		69
13,994			57,996,734		70
276,009	-15,781		5,592,443		71
					72
182,870	-16,897		5,820,475		73
			508,695		74
-1,801,430	-32,755	640,351	958,151,074		75
					76
					77
					78
					79
					80
					81
					82
					83
					84
					85
			3,909,148		86
84,358			47,540,812		87
-3,311			19,987,991		88
			487,840		89
6,100			589,955		90
2,808			6,717,563		91
4,719			3,257,478		92
			1,932		93
103,719		-103,660	27,765,019		94
2,690			850,380		95
201,083		-103,660	111,108,118		96
					97
			20,007		98
201,083		-103,660	111,128,125		99
22,138,410	-32,755		1,887,061,320		100
					101
					102
					103
22,138,410	-32,755		1,887,061,320		104