

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DT 12-084

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

Petition for Resolution of Dispute with Public Service Company of New Hampshire

Order Approving Settlement Agreement

**ORDER NO. 25,453**

January 17, 2013

**APPEARANCES:** Julie P. Laine, Esq., for Time Warner Entertainment Company L.P. d/b/a Time Warner Cable, with David A. Anderson, Esq., and Michelle E. Kenney, Esq., of Pierce Atwood LLP, and with Maria T. Brown, Esq., of Davis Wright Tremaine LLP; Michael J. Hall, Esq., for Public Service Company of New Hampshire; Kath Mullholand, *pro se*, for segTEL, Inc.; Susan S. Geiger, Esq., of Orr & Reno, P.A., for Comcast Cable Communications Management, LLC, Comcast of New Hampshire, Inc., Comcast of Massachusetts/New Hampshire, LLC, and Comcast of Maine/New Hampshire, Inc.; Harry N. Malone, Esq. of Devine, Millimet, and Branch, P.A., for Unitil Energy Systems, Inc.; and Alexander F. Speidel, Esq., for the Staff of the Public Utilities Commission.

**I. PROCEDURAL HISTORY**

On March 30, 2012, Time Warner Entertainment Company L.P. d/b/a Time Warner Cable (TWC) filed a petition with the Commission for resolution of a dispute with Public Service Company of New Hampshire (PSNH) regarding the fees charged for the attachment of TWC's cables to utility poles owned, in whole or in part, by PSNH. On July 3, 2012, the Commission issued Order No. 25,387, granting the motions to intervene by Unitil Energy Systems, Inc. (Unitil), among others. A summary of the procedural history of this docket through July 3, 2012 may be found within Order No. 25,387. Order No. 25,387 also adopted the procedural schedule proposed by Commission Staff within its technical session report, filed on June 4, 2012.

On July 20, 2012, TWC filed the testimony of Julie P. Laine. *See* Hearing Exhibit 4. On July 20, 2012, TWC also filed, in conjunction with intervenors Comcast Cable Communications

Management, LLC, Comcast of New Hampshire, Inc., Comcast of Massachusetts/New Hampshire, LLC, and Comcast of Maine/New Hampshire, Inc. (collectively, Comcast), the testimony of Patricia D. Kravtin. *See* Hearing Exhibit 2. Comcast also filed the testimony of Glenn Fiore and Christopher Hodgdon on July 20, 2012. *See* Hearing Exhibit 5. On July 25, 2012, segTEL, Inc. (segTEL) filed the testimony of Jeremy Katz. *See* Hearing Exhibit 7.

On August 21, 2012, 11 members of the New Hampshire Telephone Association (NHTA, collectively, NHTA Members) filed a motion to intervene pursuant to RSA 541-A:32 and N.H. Code Admin. Rules Puc 203.17. The Commission granted the NHTA Members' motion to intervene by a secretarial letter dated August 31, 2012. On September 14, 2012, PSNH filed the testimony of Edward A. Davis of PSNH's service-company affiliate, Northeast Utilities Service Company. *See* Hearing Exhibit 6. On September 19, 2012, the Commission issued Order No. 25,413, granting TWC confidential treatment for certain data responses provided to PSNH. On October 31, 2012, TWC filed, in conjunction with Comcast, the additional testimony of Patricia D. Kravtin. *See* Hearing Exhibit 3.

On November 13, 2012, PSNH filed a settlement agreement signed by PSNH, TWC, Comcast, segTEL, and Staff. *See* Hearing Exhibit 1, Settlement Agreement filed November 13, 2012. PSNH, with the support of the settling parties, requested that the Commission waive N.H. Code Admin. Rules 203.20(e), which requires that settlement agreements be filed for the Commission's consideration at least five days in advance of hearing. The Commission held a hearing as scheduled on November 14, 2012, on the settlement agreement. Unitil was not a signatory to the settlement agreement and took no position on it at the hearing. *See* Hearing Transcript of November 14, 2012 Public Hearing (Tr.) at 69. NHTA Members did not sign the

settlement agreement, nor did NHTA Members participate in the hearing.

## II. TERMS OF THE SETTLEMENT AGREEMENT

The settling parties, PSNH, TWC, Comcast, segTEL, and Staff, recommended that the Commission approve the settlement agreement as a just and reasonable resolution of the pole-attachment rate dispute examined in this docket. The settlement agreement outlined a new methodology for the calculation of PSNH pole-attachment rates, which would be applied to all attachments by cable television providers and competitive local exchange carriers pursuant to N.H. Code Admin. Rules Puc 1304.06(a), beginning on January 1, 2013.

Specifically, the parties to the settlement agreement propose the following formulas and related inputs for the calculation of PSNH pole attachment rates:

PSNH Pole Attachment Rate	=	0.44 x SF x Net Cost of Bare Pole <sup>1</sup> x Carrying Charge Rate <sup>1</sup>
Where,		
Space Factor ("SF")	=	$\frac{1^2 + \left[ \frac{2/3 * \frac{\text{Unusable Space}^3}{\text{Number of Attachers}^4}}{\text{Pole Height}^3} \right]}{\text{Pole Height}^3}$

The settlement agreement's specified pole attachment rate formula would be in effect and chargeable by PSNH commencing on January 1, 2013 for all attachments covered by the settlement agreement, as well as all other cable television and competitive local exchange carrier attachments without the necessity of any further or additional written notice by PSNH. The application of this provision to the settling parties would supersede any and all existing pole

<sup>1</sup> The Net Cost of Bare Pole and the Carrying Charge Rate shall be calculated in accordance with now present FCC policies and rebuttable presumptions.

<sup>2</sup> Space Occupied.

<sup>3</sup> The amount of Unusable Space is presumed to be 24 feet. The Pole Height is presumed to be 37.5 feet. These presumptions may be rebutted by either party before the NH Public Utilities Commission.

<sup>4</sup> Commencing with the 2013 pole rate calculation this value shall be no less than 2.7. Commencing January 1, 2014, this 2.7 value may be challenged as too low by petition to the NH Public Utilities Commission, provided however, that this value shall not be more than 3 prior to January 1, 2016.

attachment agreements between PSNH, and the attaching parties signing the settlement agreement which required advance written notice to be given by PSNH of a change in pole attachment fees and charges.

The formulas outlined above produce a given rate for attachments on poles wholly-owned by PSNH. PSNH, with the other settling parties, confirmed at hearing that for jointly-owned poles (owned by PSNH and one other party), the rate produced by the formula would be reduced on a pro-rata, 50 percent basis. *See* Tr. at 62-63.

For the constant figure applied as the “Number of Attachers” denominator for the Space Factor formula, PSNH and the settling parties confirmed at hearing that the constant applied in 2013 would be 2.7 with no challenge (by means of a petition to the Commission) to this figure by the settling parties pursuant to the terms of the settlement agreement until after January 1, 2014. Tr. at 65. Even if a settling party were to challenge the 2.7 constant Number of Attachers figure after January 1, 2014, however, the settling parties agreed that the Number of Attachers value would not increase above 3 prior to January 1, 2016.

For the Net Cost of the Bare Pole and Carrying Charge Rate constant figures incorporated in the rate formula (with the Footnote 1 explanatory reference above), the settling parties confirmed at hearing that these figures would be derived from FERC Form 1 data on the basis of methodologies collectively accepted by the settling parties. Tr. at 58-62. Also, PSNH indicated that the application of the new formula for 2013 rates, using input data pursuant to the terms of the settlement agreement, would result in a lower rate for attachments on PSNH wholly-owned poles. Tr. at 58.

### III. COMMISSION ANALYSIS

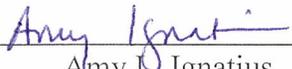
We will accept the filing of the settlement agreement by a waiver of N.H. Code Admin. Rules Puc 203.20(e), pursuant to N.H. Code Admin. Rules Puc 203.20(f), as such acceptance would promote the orderly and efficient conduct of the proceeding, and would not impair the rights of any party to the proceeding. Pursuant to RSA 541-A:31, V(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default. N.H. Code Admin. Rules Puc 203.20 (b) requires the Commission to determine, prior to approving disposition of a case by settlement, that the settlement results are just and reasonable and in the public interest.

We have reviewed the settlement agreement, in light of testimony provided by the parties at the hearing. On the basis of this review, we are satisfied that this settlement fairly delineates a rate methodology for PSNH's pole attachments in this state. The record indicates that this rate methodology offers potential cost savings which may stimulate infrastructure development in New Hampshire, while ensuring that the interests of PSNH ratepayers and investors are also protected. Having reviewed the record, including the settlement and the evidence presented at hearing, we find that the resolution of this matter through the terms of the settlement agreement is just and reasonable and in the public interest. We will adopt and approve the terms of the settlement agreement. We also commend the settling parties and Staff for their efforts in reaching a just and reasonable resolution of this matter.

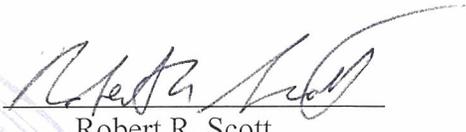
**Based upon the foregoing, it is hereby**

**ORDERED**, that the terms of the settlement agreement presented by the parties and Staff are hereby adopted and approved as discussed herein.

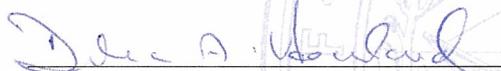
By order of the Public Utilities Commission of New Hampshire this seventeenth day of January, 2013.

  
Amy L. Ignatius  
Chairman

  
Michael D. Harrington  
Commissioner

  
Robert R. Scott  
Commissioner

Attested by:

  
Debra A. Howland  
Executive Director



**SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED**

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**Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.**

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**FILING INSTRUCTIONS:**

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND  
EXEC DIRECTOR  
NHPUC  
21 S. FRUIT ST, SUITE 10  
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**