

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DOCKET NO. DT 12-084

DIRECT TESTIMONY

OF

Jeremy Katz

ON BEHALF OF

segTEL, INC.

July 24, 2012

1 Q. Please state your name, place of employment and position.

2 A. My name is Jeremy Katz. I am the Vice President of segTEL, Inc. (segTEL) which
3 has its New Hampshire offices at 325 Mount Support Road in Lebanon.

4 Q. What are your duties at segTEL relevant to this proceeding?

5 A. At segTEL, I have ultimate responsibility for successful extension of segTEL's fiber
6 optic network throughout our service territories, including New Hampshire.

7 Q. What is the purpose of your testimony?

8 A. In its Order of Notice the Public Utilities Commission (Commission) stated that in
9 this docket it would "review the terms of the parties' agreement, with particular
10 emphasis on the rate setting provisions, to determine whether they are just and
11 reasonable in light of the relevant and applicable state and federal law." segTEL's
12 position is that the Commission should adopt a unified, reasonable pole attachment
13 rate formula that is applicable to all attachments and that the formula should be set at
14 or as close as possible to the Federal Communication Commission's (FCC) cable rate
15 formula.

16 Q: Please summarize your understanding of relevant State and Federal law.

17 A: The Telecommunications Act of 1996 (Telecom Act) provides rights of attachment
18 for competitive local exchange carriers (CLECs) and expands upon the rights and
19 privileges previously granted to Cable TV companies (CATV). The Telecom Act
20 provides that incumbent pole owners must not only provide service at rates that are
21 just and reasonable, but are cost-based. Subsequent to the Telecom Act, New
22 Hampshire's legislature granted the Commission the authority to regulate pole
23 attachments and thus the Commission became the primary venue for the resolution of
24 disputes relating to pole attachments.

1 My understanding of New Hampshire's authority under the federally mandated pole
2 attachment regime is that New Hampshire may make determinations, rulings, and
3 regulations that deviate from the federal regime so long as they do not frustrate or
4 interfere with the federal objectives of facilitating deployment of competitive services
5 or the provision of interstate telecommunications service. To me, this means that
6 New Hampshire can adopt regulations that more aggressively promote competition,
7 but can not create or adopt regulations that diminish competition or effectively
8 prohibit the provision of competitive service.

9 Q. Please summarize your testimony

10 A. My testimony is provided to place into the record that nearly all next generation
11 services, regardless of technical protocol, are provided over the same types of wires
12 that place an identical burden on poles, ducts, conduit and rights of way (collectively,
13 poles) owned by pole owners. As such, a unified pole attachment rate should be
14 implemented. My testimony is further to bring to the Commission's attention the
15 recent rulemakings of the FCC and urge the Commission to create rates that are no
16 less competitive than rates that would now exist under the federal regime. Finally,
17 my testimony is to reinforce that no agreements between pole attachers and pole
18 owners are "voluntary" in the reasonable definition of that word.

19 Q. Please describe segTEL's network.

20 A. segTEL owns and operates the largest fiber optic network of any competitive local
21 exchange carrier in the State of New Hampshire and is attached to over 30,000 poles
22 statewide.

23 Q. Are segTEL's wires physically unique ?

24 A. segTEL's cables are not at all unique. segTEL's fiber optic cable looks substantially
25 like every other fiber optic attachment placed upon poles. Coaxial cable attachments

1 are generally similar in nature to fiber optic attachments, as are private non-
2 communications attachments such as fire alarm cable. To the best of my knowledge
3 and belief, nearly every attacher in the communications space is using its attachments
4 to provide Internet access, telecommunications, information services, public safety
5 services or other forms of one and two way communications services. Over the past
6 several years, the line dividing cable television services, local exchange services,
7 internet services, emergency management services and information services has been
8 all but obliterated.

9 Q. Do different services require different delivery mechanisms?

10 A. That used to be the case, but is not any longer. Municipalities, cable television
11 companies, phone companies and even electric companies are installing fiber optic
12 cables on poles, so that each of these entities are installing and maintaining virtually
13 identical attachments.

14 Q. Do different entities consume different amounts of space on poles?

15 A. No. Communications attachers are each allocated twelve inches of vertical clearance
16 in each direction for their attachments. There is no difference in the amount of space
17 used by any communications attachment, nor any additional or different burden on
18 the pole owner in administering those attachments. Attachments used for information
19 services, television services and telecommunications services do not require
20 additional space or cause the pole owner to incur different costs. The physical cable
21 generally has little or no relation to the type of services delivered over it, or the
22 protocol used to deliver those services. Put simply, fiber optic cable can deliver just
23 about any type of service – and the services delivered do not change the attachment.

24 Q. Are you familiar with how rates are set for pole attachments?

1 A. Yes. Currently the FCC has adopted a bifurcated rate structure wherein CATV
2 providers are charged at one rate, while CLECs are charged another rate. These two
3 types of attachers are afforded a cost-based rate structure by the FCC.

4 Q. What about other attachers?

5 A. The rates charged to other attachers is not addressed by the FCC, except to the extent
6 that carriers are bound by general duties to charge rates that are just and reasonable.
7 Furthermore, to my knowledge and belief, there are many attachments throughout
8 New Hampshire that are made either at no charge to the attaching party and
9 sometimes attachments are made without the knowledge of the pole owner.

10 Q. So there are, in effect, several different rate structures?

11 A. Yes. Although the FCC has stated its intent to converge the so-called "cable rate"
12 and "telecom rate" so that the formula produces similar rates for CATV providers and
13 CLECs, it is bound by different laws to arrive at those rates using different formulae.
14 As a result, although the FCC's intent is to have rates converge, the FCC is
15 constrained in how it goes about doing that.

16 Q. What is the difference between the telecom rate and the cable rate?

17 A. The cable rate is based a static allocation of costs while the telecom rate apportions
18 costs based on the actual number of attachers. This means that the cable rate, once
19 established by a pole, is the same for every similarly situated pole, while the telecom
20 rate will vary from pole to pole, and will sometimes result in rates that are higher than
21 the cable rate and sometimes lower.

22 Q: Does the telecommunications rate create administrative problems?

23 A: Yes it does. It is very difficult to administer and verify as the number of attachers
24 changes frequently. Additionally, since attachers tend to build certain core routes for

1 interoffice transport there are often many attachers aggregated on some poles, while
2 very few on others.

3 To the best of my knowledge, none of the pole owners employ a granular
4 methodology to fully address this. In fact, the only pole owner to ever even attempt
5 this has been Public Service of New Hampshire, which implemented an “urbanized
6 communications” average rate for Manchester and Nashua built on their evaluation
7 years ago that these municipalities tended to have substantially more attachers than
8 other municipalities.

9 Q. What about rates for other attachers?

10 A. Joint use carriers, private entities, carriers who are neither CLECs nor CATV
11 providers, electric companies, affiliates and municipalities may be charged a wide
12 array of rates ranging from “free” to exorbitant with no effective oversight.

13 Q. Do you know what pole owners are actually charging other attachers?

14 A. I am aware that municipalities are rarely, if ever, charged for attachments they make
15 to poles. Therefore, in effect the utility community is forced to subsidize the burden
16 of municipal attachments.

17 Q. Is New Hampshire bound by the same rules as the FCC?

18 A. I don’t want to draw a legal conclusion, but it’s my understanding that as long as New
19 Hampshire sets rates that do not conflict with the federal requirements or interfere
20 with the imperative New Hampshire may adopt a single rate for pole attachments. I
21 believe that many other states have done so already.

22 Q. What is segTEL’s recommendation for a single rate?

1 A: segTEL recommends that New Hampshire adopt the cable formula for a single rate
2 and require that all CATV and CLEC attachers pay this rate. I further recommend
3 that all other attachers that are not entitled to cost based rates under federal law
4 should be charged rates that are no less than the CATV and CLEC rates.

5 Q: Why does segTEL support this?

6 A: For three reasons: I believe that have a single unified rate is fair to all attachers;
7 ensures that there is no discrimination based solely on the business plan of the
8 attacher; and is simpler for the pole owners to administer.

9 Q: Would you support New Hampshire simply adopting the new FCC rules?

10 A: If it resolved the issue faster, then yes. I believe that the FCC has tremendous
11 expertise in this matter and conducted a fair and extensive rulemaking process that
12 engaged all stake holders. It may not make sense to reinvent the wheel when we can
13 simply accept the FCC's findings.

14 Q: Would a lower rental rate result in additional investment in broadband facilities
15 throughout the State?

16 A: I can not answer for others but I can answer for segTEL. Many of our business cases
17 revolve around not only the initial capital cost of building network, but the ongoing
18 operational expense of maintaining the network. Our major expense in OPEX
19 (operational expenses) from a recurring perspective is rental fees for pole
20 attachments. A reduction in rent would allow us to engage in more risk related to
21 new build and extend our network further out into areas previously evaluated to be
22 uneconomical.

23 Q: Would pole owners be unfairly prejudiced by a rate decrease?

1 A: I believe that pole owners are now receiving profits through pole attachment fees that
2 was previously unanticipated. Once upon a time there were very few attachers and
3 hence rent was relatively low. Now there are poles that segTEL is attached to that
4 have upwards of 6 independent rent remitters paying annual fees at rates that have not
5 been approved or audited by any regulatory agency. While I do not believe that pole
6 owners should be forced to sell at a loss, I do believe that a thorough investigation of
7 the record will result in a finding of no harm. I also believe that any reduction in
8 rental fees would likely be recovered by new rents that should be charged to attachers
9 that were previously receiving free attachments.

10 Q: Do you believe that pole attachment agreements are voluntary agreements and that
11 you have power to negotiate rates when entering into an agreement?

12 A: No. CLECs do not have any negotiating power when asking for a pole attachment
13 agreement. The agreements are, by and large, completely standardized and the
14 amount of time that it takes to get to market is very long even when everybody plays
15 by all the rules and complies with all timelines. It is a very difficult business and I do
16 not believe any CLEC or CATV company has the ability or the time to litigate for
17 truly fair and bilateral agreements. That is why the FCC implemented, and has
18 repeatedly supported, the "sign and sue" rule which was upheld by the US Supreme
19 Court. The FCC once again reinforced its support of sign and sue just last year. In
20 the process of deployment of network and dealing with pole owners we must first
21 endure the pain and then at a later time seek to recover and rehabilitate our positions.

22 Q. Is this the end of your testimony?

23 A. Yes.