

**BEFORE THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
Case No. _____**

**PETITION FOR INVESTIGATION INTO PROPOSED CHARGES
FOR UTILITY POLE MAKE READY**

New Hampshire Optical Systems, LLC (“NHOS”), by its counsel, Hinckley, Allen & Snyder LLP, hereby petitions the State of New Hampshire Public Utilities Commission (the “Commission”) to conduct an investigation into the just and reasonable cost of third party make-ready work relating to pole attachments necessary for the construction by NHOS of a statewide fiber-optic cable network.

NHOS has been awarded a contract to construct a federally-funded project to establish affordable broadband access throughout New Hampshire. To complete this work, NHOS will attach fiber-optic cable to approximately 23,000 utility poles which include cable attachments owned by utilities other than the pole owners (“Third Party Attachees”). Despite good faith efforts, NHOS has been unable to reach agreement with certain Third Party Attachees over the cost of make-ready work required for the NHOS pole attachments. In order to prevent this disagreement from further derailing NHOS’ work on the project, NHOS requests pursuant to RSA 365:5 that the Commission investigate the matter, and establish the just and reasonable cost for third party make-ready work that is required to accommodate pole attachments, such as proposed to be made by NHOS.

FACTS

1. NHOS is a registered CLEC based in Nashua, New Hampshire.
2. NHOS is installing approximately 750 miles of fiber-optic cable through a region extending generally from the New Hampshire seacoast to the southwest part of the state, and then north to the Lakes Region and the North Country (the “Middle Mile Project”).

3. Construction will require NHOS to attach fiber-optic cable to approximately 23,000 utility poles that are primarily joint-owned / joint use and in the public right-of-way. Transmission facilities owned by various Third Party Attachees, such as other CLECs and Cable TV providers have previously been installed on certain of these poles.

4. The pole owners have not objected to NHOS undertaking the pole attachments necessary for the construction of the Middle-Mile Project. To make room for the NHOS attachment, the pole owners have directed the Third Party Attachees to rearrange existing facilities.

5. Some of the Third Party Attachees have demanded that their make-ready work be performed at excessive rates, and that NHOS pay, in full, their stated cost of this work prior to performing their make-ready work.

6. By way of example, NHOS has received a quoted rate of \$214.50 (exclusive of pre- and post- construction survey fees and travel costs) from Third Party Attachees for lowering a single facility, however, in connection with a recent request for proposal conducted by an NHOS' affiliate, the documented industry average quoted for the same services was \$54.28, with a low cost of \$22.00. In addition, NHOS is aware that similar Third Party Attachees have negotiated contract rates of less than \$23.00 plus traffic management for the same work.

APPLICABLE STATUTES AND REGULATIONS

7. Under RSA 374:2, all charges demanded by any public utility for any service "shall be just and reasonable." Any charge that is unjust or unreasonable, or in excess of that allowed by law, is prohibited. Id.

8. Under RSA 374:34-a, the Commission has the authority to regulate the rates, charges, terms, and conditions of pole attachments. Further, under RSA 365:5, the Commission

may, on its own motion or upon the petition of a public utility, “investigate or make inquiry in a manner to be determined by it as to any rate charged or proposed.”

9. Here, although the pole owners may require that Third Party facilities be relocated under no circumstances may the Third Party Attachees require NHOS, or any potential attachee, to pay a premium for the facility relocation costs. Only the actual costs may be charged for this work, and the charges must be just and reasonable.

10. During the past four months, NHOS has attempted to reach agreement with the Third Party Attachees over the completion of the make-ready work required for the NHOS pole attachments, the costs of that work, and the allocation of those cost.

11. Despite good faith efforts, NHOS has not been able to reach agreement with the Third Party Attachees over the cost of the make-ready work. To date, the Third Party Attachees have demanded reimbursement at rates that far exceed the just and reasonable cost of the work, in some cases defending their cost position on the argument that their pricing is consistent with the costs charged by the pole owners. Nevertheless, this position is misguided, as costs associated to the pole owner are significantly higher than to the Third Party Attachees, and as such, the added cost should not be passed on to NHOS. Further, the actions of these Third Party Attachees threatens to bar the NHOS pole attachments unless or until NHOS agrees to pay the costs demanded, and Third Party Attachees have rejected NHOS’s offer to perform the make-ready work itself at no cost and with their oversight.

12. The ongoing disagreement over the cost of make-ready work threatens to interfere with NHOS’s ability to complete the Middle-Mile Project, an outcome which could prevent Network New Hampshire Now (“NNHN”) from meeting the June, 2013 deadline established as a condition of receiving federal funds for the state-wide broadband project, and further, provide a

means for Third Party Attachees to financially benefit from or delay any competitive attachments such as NHOS.

13. The Vermont Public Service Board has stated in Rule 3.700 of its regulations, that “In completing make-ready work, a utility should pursue reasonable least-cost alternatives ...currently relied upon by that utility”. While obviously the Vermont statute is not applicable in New Hampshire, ensuring reasonable low cost alternatives for third party make-ready services should be shared commitment by New Hampshire. In this instance, certain of the Third Party Attachees have claimed they will use in-house crews to complete make-ready in an attempt to justify their rates. The same Third Party Attachees are known to outsource much of their construction and should be expected to do so to complete make-ready and not attempt to hide true cost by claiming in-house cost well above industry norm. In addition, make-ready work should be conducted consistent with the Third Party Attachees’ typical construction practices and adopting higher cost practices because the cost burden can be passed on to potential attachees should not be considered just and reasonable.

14. In certain instances, Third Party Attachees are charging make-ready survey fees for all poles on the applications submitted to the pole owners by NHOS. In many instances, these Third Party Attachees have no make-ready on the majority of the poles and often do not even have facilities on these poles. This practice should not be considered just and reasonable.

REQUEST FOR INVESTIGATION AND RELIEF

15. Pursuant to RSA 365:5, NHOS requests that the Commission investigate this matter, and establish the just and reasonable cost for third party make-ready work that is required to accommodate the NHOS pole attachments.

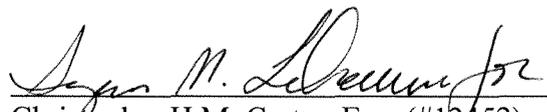
16. In addition, NHOS request that the Commission establish the just and reasonable charges Third Party Attachees can charge for make-ready work required to accommodate the NHOS pole attachments.

Respectfully submitted,

NEW HAMPSHIRE OPTICAL SYSTEMS,
LLC

By its attorneys

Dated: April 24, 2012



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