

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

NEW HAMPSHIRE OPTICAL SYSTEMS, LLC
DT 12-107

UNIVERSITY SYSTEM OF NEW HAMPSHIRE'S PETITION TO INTERVENE

The University System of New Hampshire ("USNH") hereby petitions the New Hampshire Public Utilities Commission to intervene in the above-captioned proceeding, and in support thereof states as follows:

1. On July 1, 2010, USNH was awarded a grant of up to \$44.5 million ("the Broadband Build-out Grant") by the U.S. Department of Commerce under the Broadband Technology Opportunities Program ("BTOP"). The purpose of BTOP is, among other things, (a) to fund the construction of infrastructure in areas and communities where it otherwise may not be possible or economically viable and (b) to deploy new or improved broadband Internet infrastructure and connect community anchor institutions. The Broadband Build-out Grant is intended to help fund a public-private collaboration to construct an open-access, high-speed, middle-mile, fiber optic network (the "Middle Mile Network") designed to support public educational, economic, public safety and governmental needs primarily in certain unserved and underserved areas in the State of New Hampshire (the "Project"). The Project has been actively supported by the Governor of the State of New Hampshire, members of the State's Congressional delegation, the State's Department of Resources and Economic Development, Department of Transportation, and Department of Safety, and the National Telecommunications and Information Administration of the United States Department of Commerce.

2. After USNH was awarded the Broadband Build-out Grant, it issued a request for proposals (the “RFP”) to solicit proposals to build, provide and/or operate the Middle Mile Network. As a result of the RFP process, USNH selected New Hampshire Optical Systems, Inc. (“NHOS”) to construct the Middle Mile Network, which requires NHOS to install cable on approximately 22,000 utility poles owned by various New Hampshire utilities. In order to comply with the terms of the Grant, the Middle Mile Network must be completed by June 30, 2013.

3. To date, NHOS has obtained the necessary licenses to attach its fiber optic cable to approximately 15,000 (68%) of the poles necessary to complete the Middle Mile Network. Construction of the project has generally proceeded as planned, but it is USNH’s understanding that NHOS has been unable to attach its cable to a number of utility poles because of the failure of parties with existing attachments on those poles (“Objecting CLECs”) to move their facilities and the reluctance of the relevant pole owners to take action to move those facilities themselves or cause them to be moved. It is further USNH’s understanding that the grounds asserted by the Objecting CLECs for their failure to move their facilities are not consistent with industry practice and do not comply with their obligations under their pole attachment agreements with the pole owners.

4. USNH believes that the pole attachment agreements between the owners of the relevant utility poles and the Objecting CLECs gives the pole owners the right and obligation to move the Objecting CLECs’ existing attachments in order to make room for NHOS’s cable. It is USNH’s understanding that some or all of the pole owners are reluctant to exercise their rights under their pole attachment agreements because they fear that the Objecting CLECs will commence litigation against them if they do so. This state of uncertainty on the part of the pole

owners in the face of the Objecting CLECs' failure to move their facilities in a manner consistent with standard practice is now causing significant delay in construction of the Middle Mile Network.

5. It is critical to the success of the Middle Mile Network that it be completed in a timely fashion. Failure to do so, may cause USNH to be unable to comply with the terms of the Broadband Build-out Grant and complete the Project. Failure to complete the Project will result in direct harm to USNH, the other participants in the Project, and to the general public interests of the State of New Hampshire. Therefore, the prompt involvement of the New Hampshire Public Utilities Commission and the active involvement of the Commission's staff in this dispute is of the utmost urgency.

6. USNH's rights, duties, privileges, immunities and other substantial interests are likely to be affected by this proceeding. USNH's participation in this proceeding will be consistent with the interests of justice and will not impair the orderly and prompt conduct of the proceeding, particularly given that NHOS has only recently amended its initial petition and the proceeding is still in its initial stages.

WHEREFORE, USNH respectfully requests that it be granted full intervenor status in the above-captioned proceeding.

UNIVERSITY SYSTEM OF NEW HAMPSHIRE

By its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: August 20, 2012

By:



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Certificate of Service

I hereby certify that a copy of this Petition to Intervene has been served on the parties identified on the service list in this case.


Steven V. Camerino