

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 12-107

NEW HAMPSHIRE OPTICAL SYSTEMS, INC.

Petition for Investigation into Proposed Charges for Utility Pole Make Ready

MOTION FOR LEAVE TO FILE RESPONSE TO OBJECTION

NOW COMES New England Cable & Telecommunications Association, Inc. (“NECTA”), by and through its undersigned counsel, and respectfully moves that the New Hampshire Public Utilities Commission (“the Commission”) permit NECTA to file a response the Objection to Motions to Dismiss filed by New Hampshire Optical Systems, Inc. (“NHOS”) in the above-captioned docket. In support of this Motion, NECTA states as follows:

1. On August 13, 2012, NECTA filed a Motion to Dismiss NHOS’s Amended Petition for Investigation arguing, *inter alia*, that the Amended Petition was vague and deficient. NHOS filed an Objection to the Motion to Dismiss on August 23, 2012. On September 5, 2012, the Commission denied the Motion to Dismiss and ordered NHOS to provide direct answers, under oath, to a series of questions that the Commission posed in order to establish a factual framework for further investigation of the matters asserted by NHOS in this docket. *See* Order No. 25, 407 (Sept. 5, 2012) at 7-8. The Commission further ordered that once it receives factual evidence in response to its questions, as well as any follow-up thereto, the Commission will determine how best to proceed. *Id.* at 10.

2. Although NECTA is not seeking a rehearing or reconsideration of Order No. 25, 407, NECTA wishes to address certain inaccuracies and inconsistencies contained in NHOS's Objection in order to provide the Commission with a more accurate and clear record in this proceeding. As Order No. 25, 407 indicates, it is unknown at this juncture if and/or how this docket will proceed. In view of this uncertainty, NECTA does not wish to leave unanswered the statements in the Objection which NECTA believes are incorrect or misleading.

3. Because the Commission's rules do not expressly authorize a party to respond to an objection, NECTA is filing the instant Motion.


WHEREFORE, NECTA respectfully requests that the Commission:

- A. Allow NECTA to file the attached letter in this docket; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,

NEW ENGLAND CABLE AND
TELECOMMUNICATIONS ASSOCIATION, INC.

By its attorneys,
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Dated: September 14, 2012

Certificate of Service

I hereby certify that on this 14th day of September, 2012, a copy of the within Motion was sent by electronic or U.S. mail to persons listed on the Service List.

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September 14, 2012

Via Electronic Mail and Hand Delivery

Ms. Debra A. Howland, Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03302

Re: DT 12-107 - New Hampshire Optical Systems, Inc.

Dear Ms. Howland:

I am writing on behalf of New England Cable and Telecommunications Association ("NECTA") for the purpose of addressing inaccuracies and inconsistencies in New Hampshire Optical Systems, LLC ("NHOS") Objection to Motion to Dismiss dated August 23, 2012 (the "Objection"). NECTA is mindful that the Commission has recently ruled on the Motions to Dismiss filed by NECTA and CLEC Association of Northern New England ("CANNE") with regard to this docket. Although NECTA is not seeking reconsideration of Order No. 25, 407 dated September 5, 2012, NECTA nonetheless wishes to clarify and correct the allegations set forth in the NHOS Objection.

NHOS severely mischaracterizes the reasons behind NECTA's position in this matter. For example, NHOS states that NECTA and CANNE's arguments for dismissal would allow deficiencies to persist – "apparently for the benefit of NECTA and CANNE members, but to the detriment of the public interest." Objection at ¶8. NECTA strongly objects to these allegations. The record in this docket clearly reveals that NECTA's position thus far has been procedural in nature, limited to arguing for dismissal due to NHOS's failure to provide adequate information to support its allegations in order to avoid, in NECTA's view, an unnecessary and expansive investigation that could potentially involve 106 CLECs and 23,000 pole attachments. *See* Order No. 25, 407 at 7. Inasmuch as Order No. 25, 407 requires NHOS to provide detailed and comprehensive information under oath about its alleged pole attachment disputes, NECTA's claims concerning the inadequacy of NHOS's petitions have been validated.

In paragraph 2 of its Objection, NHOS misrepresents NECTA's position by stating that NECTA "**do[es] not deny**...that delays and anticompetitive actions by third-party attachers threaten the Middle-Mile Project." This statement unfairly mischaracterizes NECTA's position in this docket by implying that NECTA's failure to take a substantive position on NHOS's allegations is commensurate with admitting their truth. NECTA denies that its members are

engaging in anti-competitive actions. Rather, NECTA's members have been working cooperatively with NHOS. Where make-ready issues have arisen between third party attachers, NECTA members are working them out through normal business processes.

NHOS further mischaracterizes NECTA's position when it alleges that NECTA's Motion to Dismiss creates "fictional reasons" why NHOS's claims should not be investigated. Objection at ¶ 4. NECTA strongly disagrees. Contrary to NHOS's allegations, NECTA's position is grounded in reality: history has demonstrated that pole attachments have been occurring in New Hampshire without necessitating a broad-scale Commission investigation or rule-making as NHOS has requested. As referenced above, when particular disputes have occurred, they have been dealt with through normal business processes or if required, Commission intervention.

Contrary to the actions taken by NHOS to date in this proceeding, NECTA supports an expeditious resolution of this docket, primarily by narrowing the scope of the docket and identifying specific parties to the dispute. Although the Objection, at paragraph 6, states that a "prompt resolution of the issues raised by NHOS is necessary to ensure that the Middle-Mile Project is constructed by the June 2013 project deadline," NHOS's own conduct undercuts its request for prompt relief. *See* Order No. 25, 407 (Sept. 5, 2012) at 6-8. Instead of seeking resolution and enforcement processes for any confirmed wrongdoing, NHOS asks the Commission to invoke its general "investigative powers" and is content to allow the Commission to take action against any wrongdoers only "in a later phase of this proceeding or in a separate proceeding." Objection, ¶ 6.

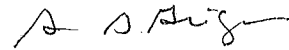
NHOS misrepresents its own conduct in this proceeding. NHOS states that it has attempted to avoid creating an overly adversarial situation that would lead to extended litigation with charges and counter charges by multiple parties. Objection at ¶ 6. However, by making broad allegations and failing to specify parties with whom it has an issue, NHOS has acted in a manner that has led to precisely the type of proceeding that NHOS alleges it is seeking to avoid. NHOS's vague, non-specific charges have caused numerous parties to expend time and resources monitoring and participating in this docket and DT 12-246, even though it appears that NHOS's claims actually implicate very few parties.

With respect to the proceeding itself, NHOS also mischaracterizes its nature. Paragraph 1 of NHOS's Objection states "[t]his is not an adjudicative hearing." This statement is totally inconsistent with other statements that clearly indicate that NHOS is seeking a "resolution" of issues and disputes over make ready work. *See, e.g.* Objection at ¶ 6 ("a prompt resolution of the issues raised by NHOS is necessary") and ¶10 (FairPoint and segTEL are "critical to the resolution of disputes over make ready work.") The statement is also inconsistent with the Commission's authority under RSA 374:34-a, VII to "hear and resolve" complaints concerning denial of access relative to pole attachments, which requires the Commission to "conduct an adjudicative proceeding." N.H. Admin. Rule Puc 1304.05. While in one respect, NHOS does appear to seek an adjudication of wrongdoing, at the same time it is asking for a broader investigation of practices that NHOS apparently believes can be concluded without Commission action, as referenced in paragraph 6 of the Objection.

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NECTA appreciates the opportunity to provide these comments and to address the mischaracterizations in the NHOS Objection. NECTA looks forward to the issues in this matter being further defined and narrowed, as contemplated by the questions posed by the Commission to NHOS in Order No. 25, 407.

Very truly yours,



Susan S. Geiger

cc: Service List (electronic mail only)

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