

Geiger, Susan S.

From: Wiesner, David K <David.Wiesner@puc.nh.gov>
Sent: Monday, January 29, 2018 9:54 AM
To: Geiger, Susan S.
Cc: Mullholand, Kath
Subject: DRM 17-139 Puc 1300 Pole Attachment Rules

Susan,

Following the public comment hearing last week on the Puc 1300 pole attachment rules, I reviewed again the relevant provisions of RSA 362:7, II and III and noted that the paragraph III(e) exceptions contain an express reference to "the application or enforcement of . . . RSA 374:34-a," the pole attachment statute. In addition, as noted by NHTA, the paragraph III(d) exception references "the joint use of poles or other structures in [public] rights-of-way." The full text of paragraphs II and III of RSA 362:7, with the most relevant language highlighted, reads as follows:

~~II. Except as set forth in paragraph III, notwithstanding any other provision of law to the contrary, no department, agency, commission, or political subdivision of the state, shall enact, adopt, or enforce, either directly or indirectly, any law, rule, regulation, ordinance, standard, order, or other provision having the force or effect of law that regulates or has the effect of regulating the market entry, market exit, transfer of control, rates, terms, or conditions of any VoIP service or IP enabled service or any provider of VoIP service or IP-enabled service. VoIP services and IP-enabled services are not public utility services and a provider of VoIP service or IP-enabled service is not a public utility under RSA 362:2, or an excepted local exchange carrier under RSA 362:7, I(c) and shall not be regulated as a public utility in any manner other than as set forth in paragraph III.~~

~~III. The prohibitions of paragraph II shall not be construed to:~~

- ~~(a) Affect or limit the application or enforcement of criminal or other laws that apply generally to the conduct of business in the state, including, without limitation, consumer protection, or unfair or deceptive trade practice protections;~~
- ~~(b) Affect, mandate, or prohibit the assessment of taxes or nondiscriminatory 911 fees, telecommunications relay service fees, or other fees of general applicability;~~
- ~~(c) Modify or affect the rights or obligations of any telecommunications carrier, or any duties or powers of the public utilities commission, under 47 U.S.C. section 251 or 47 U.S.C. section 252, as applicable;~~
- ~~(d) Affect the authority of the state or its political subdivisions, as applicable, to manage the use of public rights-of-way, including, but not limited to, any requirement for the joint use of poles or other structures in such rights-of-way;~~
- ~~(e) Affect or limit the application or enforcement of RSA 371:17 through RSA 371:24, RSA 374:2-a, RSA 374:28-a, RSA 374:34-a, RSA 374:48 through RSA 374:56, RSA 374:59, RSA 378:44 through RSA 378:48, or RSA 374:30, II;~~
- ~~(f) Affect or modify any obligations for the provision of video service by any party under applicable law.~~

We would ask that you please address your interpretation of these statutory provisions, and the apparent legislative intent evidenced thereby, in the written comments to be filed on behalf of NECTA by Friday, February 2nd. That explication should prove helpful to the Commission in considering the proposed rules amendments to which you have objected.

Please feel free to contact me if you should have any questions or concerns with respect to this matter.

Thanks, Dave

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