

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

January 24, 2018 - 1:08 p.m.  
Concord, New Hampshire

9 FEB '18 PM 12:20

RE: DRM 17-139  
RULEMAKING:  
N.H. Code Admin. Rules Puc 1300  
Utility Pole Attachment Rules  
Readoption and Amendment.  
(Hearing to receive public comment)

PRESENT: Chairman Martin P. Honigberg, Presiding  
Commissioner Kathryn M. Bailey  
Commissioner Michael S. Giaimo

Sandy Deno, Clerk

APPEARANCES: (No appearances taken)

Court Reporter: Steven E. Patnaude, LCR No. 52

CERTIFIED  
ORIGINAL TRANSCRIPT

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**P R O C E E D I N G**

1  
2 CHAIRMAN HONIGBERG: Good afternoon,  
3 everyone. We're here in Docket DRM 17-139,  
4 which is a rulemaking regarding the 1300  
5 section of our rules regarding utility pole  
6 attachments. We're here for a public comment  
7 hearing on a proposed set of rules that we  
8 filed with the Joint Legislative Committee on  
9 Administrative Rules.

10 Mr. Wiesner, is there any  
11 scene-setting that would be helpful for people?

12 MR. WIESNER: I think it's pretty  
13 clear in the Order of Notice what we're doing  
14 here today. These are current rules of the  
15 Commission that we're looking to readopt with  
16 amendments. They were due for renewal, and  
17 we've made what we believe to be a modest set  
18 of changes to those rules.

19 We have today a public hearing, and  
20 then commenters are invited to file written  
21 comments by next Friday, the 2nd. And then the  
22 Commission will go forward with the process  
23 from there.

24 I will note that we have some folks

1 on the line who are listening in to this  
2 hearing, but they have been asked not to speak.  
3 The speakers should be those who are in the  
4 room.

5 CHAIRMAN HONIGBERG: All right.  
6 Thank you very much. I have a sign-in sheet.  
7 There are two pages, although a number of the  
8 people who signed in have indicated that they  
9 do not wish to speak. What I'll do is, I will  
10 take them in the order where I see indications  
11 of a desire to speak. I'll do my best with  
12 names. I'll try and call the name of the  
13 person who we're expecting to speak, and then  
14 the next two names, so people can be ready. We  
15 have a microphone up front set up for people to  
16 speak. It works best both for the  
17 stenographer, and for the folks listening, I  
18 suspect, if people use the microphone that's up  
19 here.

20 So, with that, the first person I'm  
21 calling on is Carolyn Ridley, to be followed by  
22 Lawrence Lackey and Paul Phillips.

23 MS. RIDLEY: Good afternoon, Chairman  
24 and Commissioners. My name is Carolyn Ridley,

1 and I'm the Senior Director of State Public  
2 Policy for CenturyLink. I'm the new kid on the  
3 block, I guess, here in New Hampshire. This is  
4 my first time to address the New Hampshire  
5 Commission. But I have 36 years in the  
6 telecommunications industry, and 26 years doing  
7 regulatory and legislative work for companies  
8 like AT&T, TW Telecom, Level 3, and now  
9 CenturyLink.

10 On November 1st of 2017, CenturyLink  
11 bought Level 3, and it's making it now the  
12 second largest U.S. communications provider for  
13 global enterprise customers. We offer a wide  
14 range of technological solutions in 500  
15 markets, in all 50 states and in over 60  
16 countries.

17 We're network builders, and we have  
18 over 100,000 lit buildings globally. We have  
19 over 450,000 fiber route miles globally, and  
20 that actually equates to fiber going around the  
21 globe ten times, just to give the visual of how  
22 much fiber we have laid in the ground.

23 In the six Northeast states -- well,  
24 I should say the New England states, we have

1 already invested over \$420 million in  
2 infrastructure, and we really -- this region is  
3 going to become a significant growth  
4 opportunity for CenturyLink going forward.

5 CenturyLink is in a position to offer  
6 a unique perspective on pole attachments. We  
7 not only own over 2 million poles, but we  
8 connect across the country to over 5 million  
9 poles. So, both being a pole owner and a new  
10 attacher, we think we can have a fairly  
11 balanced view. Because whatever we advocate in  
12 New Hampshire, where we're not a pole owner, we  
13 also have to be accountable for the states  
14 where we are pole owners.

15 We have an -- we've built an  
16 extensive network, but we also intend to  
17 continue to build infrastructure, so we need  
18 consistent and predictable rules to allow us  
19 to -- to allow access to a pole as a new  
20 attacher.

21 There's a national focus right now on  
22 broadband deployment and on accelerating  
23 broadband deployment. And the efforts to  
24 reform the pole attachment rules in New

1 Hampshire is very timely, as other surrounding  
2 states and the SEC are revisiting their rules  
3 to shorten the timeframes for making  
4 attachments, to eliminate any cumbersome  
5 processes, and to ensure that costs are fair  
6 and reasonable.

7 We need to be able to meet our  
8 customers' demands, we need to be able to move  
9 at the speed of business. We need consistency  
10 and predictable timeframes, processes, and  
11 costs associated with our network builds,  
12 including pole attachments.

13 For the states that have reverse  
14 preemption on pole attachments, such as New  
15 Hampshire, CenturyLink believes that the most  
16 important role for the states to play is to be  
17 a regulatory backstop and to resolve disputes.  
18 The CTIA proposed that the New Hampshire --  
19 that the New Hampshire Commission adopt the  
20 Maine "Rapid Response" procedures for dispute  
21 resolution, and CenturyLink would support that  
22 proposal.

23 The reason that I say "dispute  
24 resolution is the most important role for the

1 states" is that CenturyLink strongly believes  
2 that New Hampshire, as well as the other states  
3 with reverse preemption, should adopt the FCC's  
4 pole attachment order, in terms of rates, terms  
5 and conditions. Echoing the comments that were  
6 made by the CTIA and the University of New  
7 Hampshire, consistency with the FCC rule will  
8 enable multistate attachers and pole owners to  
9 have a consistent, familiar set of rules, which  
10 promotes efficiency and predictability. So,  
11 since CenturyLink operates in all states within  
12 the United States, it's easier for us to be  
13 able to know what the rules are, if we know  
14 that the state that we're building in has -- is  
15 operating according to the FCC rules.

16 There's no need to reinvent the  
17 wheel. The FCC took over ten years to develop  
18 the rules in their first Order, it continues to  
19 tweak those rules as issues arise and the  
20 technology changes. The FCC's rules were  
21 developed with input from all sides of the  
22 equation, and have stood the test of appeals  
23 and legal challenges. We think then it's  
24 logical and strategic for the state to

1 recognize the federal efforts and to -- on pole  
2 attachments, and to do what's in the best  
3 interest by adopting the FCC's order.

4 If the Commission wants to move  
5 forward with the redlining of its own rule,  
6 however, CenturyLink would propose some  
7 suggestions to the draft rule.

8 First of all, we need a make-ready  
9 process that has more specific timeframes for  
10 each step in the process and that reasonably  
11 shortens the overall process. The proposed  
12 rule is not clear. It appears that there is 45  
13 days to complete the survey, no timelines for  
14 the estimates for make-ready work, and no  
15 timelines for the attacher's acceptance. Then  
16 there's 150 days for the completion of  
17 make-ready. The FCC's timeline has the total  
18 pole attachment process done in 133 to 148  
19 days, as compared to the New Hampshire process  
20 that takes at least 195 days. And that's not  
21 accounting to note days attached to those two  
22 other steps that I mention.

23 If there is a goal to encourage  
24 broadband deployment in New Hampshire, then the

1 make-ready process must be addressed. As  
2 proposed by the University of New Hampshire and  
3 the CTIA in their filed comments, in order to  
4 improve the timelines for make-ready, the FCC's  
5 four-stage framework and make-ready rules  
6 should be adopted.

7 CenturyLink supports the revised  
8 definition of "make-ready" that includes the  
9 complete removal of any pole replaced at the  
10 time the new pole is set. We would also  
11 suggest another redline in Section 1303.07,  
12 making it clear that a new attacher does not  
13 have to pay for the double pole to be removed  
14 that should have been removed when the  
15 replacement pole was set. So that it's not the  
16 new attacher that has to pay for the make-ready  
17 that should have been done when the replacement  
18 pole was set.

19 Additionally, pursuant to an FCC  
20 rule, that same section should be amended to  
21 allow an attacher to use a utility-owned  
22 [utility-approved?] contractor to perform  
23 make-ready work in cases where a pole owner has  
24 not done so within the prescribed period.

1 CenturyLink also suggests that the  
2 Notification section needs some more  
3 clarification. We're confused about a  
4 statement in the notice section that states "a  
5 pole owner must give 60 days notice" when they  
6 are modifying the facilities. We're not really  
7 sure if that's been -- is assumed to be part of  
8 the make-ready process or not. It's not  
9 articulated in the make-ready process. So, we  
10 assume not, but we would like clarification, so  
11 we're not building in 60 days advance notice on  
12 the front end of the make-ready process.

13 Additionally, the section also says  
14 that a new attacher has to give -- or, an  
15 attacher, I should say, has to give the pole  
16 owner notice if they're going to modify their  
17 attachment. We think that, if an attacher is  
18 overlashing fiber, that an appropriate  
19 timeframe for notification is ten days after  
20 the overlashing of fiber is done, and that  
21 there is no need to give 60 days advance notice  
22 if they're just overlashing fiber. If they're  
23 overlashing other pieces of equipment, where  
24 there could be a weight load issue or some type

1 of issue on aesthetics, then it would be  
2 appropriate to go through that pole attachment  
3 process to add those types of equipment.

4 And finally, to reiterate,  
5 CenturyLink would propose that the New  
6 Hampshire Commission adopt the FCC's rate  
7 formula, instead of just considering it in its  
8 determination of just and reasonable rates for  
9 pole attachments. However, if it proceeds in  
10 having its own rate review standards, then  
11 we're happy to see that you updated the  
12 proposed draft to incorporate the FCC's most  
13 current Order. But it might make more sense  
14 just to reference the FCC's Order on the rate  
15 formula in case it changes again in the future  
16 that would not have the need to continue to do  
17 that.

18 I thank you for the opportunity to  
19 present these comments. And if you have any  
20 questions for me, I'm happy to answer them.

21 CHAIRMAN HONIGBERG: Commissioner  
22 Bailey.

23 CMSR. BAILEY: Thank you. Thank you.  
24 Can you hear me?

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*[Short pause.]*

CMSR. BAILEY: Thank you. That one works.

You said in the beginning of your remarks you were the "new kid on the block" and that you see "significant growth opportunity" in New Hampshire. Can you tell me what CenturyLink's plan is in general? I mean, are you planning to come in and build a distribution network?

MS. RIDLEY: We're looking at the strategic opportunities in the Northeast. The Vice President of Sales, that was the lead sales person in the Company over the last couple of years, he's been now moved to the Northeast to focus on driving sales opportunities where they present themselves. We're focusing on states where we have the best rules in place, to be honest with you, where there's the most opportunity that we see. So, there are several things that are driving investment opportunities.

But the speed to get to the market is a really big driving factor. So, I'm working

1           closely with my colleague, the Vice President  
2           of Sales, Mike Fiacco, to be able to give him  
3           some guidance about were we have the best  
4           rules to get into business for our enterprise  
5           group.

6                        CMSR. BAILEY: I have two questions  
7           to follow up on that.

8                        Which state in the Northeast do you  
9           think has the best rules right now?

10                      MS. RIDLEY: There's actually --  
11           Rhode Island actually has great rules. We've  
12           put together this little spreadsheet that has  
13           all the different rules, and where we have  
14           issues in the different states. And each state  
15           has some nuances that we'd like to see changed,  
16           but probably Rhode Island is the most  
17           favorable. And I'm not sure that that's going  
18           to be a target state for us initially or not,  
19           but it has right now the best rules.

20                      So, we're in that process of  
21           identifying the rules, which rules we think are  
22           the most favorable. And I can share more of  
23           that detail as we get our strategic plan in  
24           place. But we're just literally kind of

1 getting off the ground since this deal just  
2 closed.

3 CMSR. BAILEY: And is the vision to  
4 invest in fiber or small-scale wireless or --

5 MS. RIDLEY: Neither Level 3 nor  
6 CenturyLink have a wireless play. So, our  
7 investment is in fiber. And whether we do that  
8 aerially or underground depends upon, again,  
9 what the pole attachment rules are or the  
10 right-of-way access rules. So, it really  
11 depends upon how we can get to the market the  
12 quickest. But we -- so, that's a deciding  
13 factor for us as well.

14 CMSR. BAILEY: Okay. Thank you.

15 MS. RIDLEY: Sure.

16 CHAIRMAN HONIGBERG: Thank you,  
17 Ms. Ridley.

18 MS. RIDLEY: Sure.

19 CHAIRMAN HONIGBERG: The next speaker  
20 is Lawrence Lackey, to be followed by Paul  
21 Phillips and Patrick Taylor.

22 MR. LACKEY: Good afternoon. For the  
23 record, my name is Lawrence Lackey. I'm  
24 Director of Regulatory for FirstLight Fiber.

1 FirstLight Fiber is headquartered in Albany,  
2 New York. It provides a fiber optic network,  
3 internet, data center, cloud, and VoIP  
4 services, enterprise and carrier customers  
5 throughout the Northeast. Our clientele  
6 includes national cellular providers, wireline  
7 carriers, many leading enterprises that span  
8 high-tech, manufacturing, research, hospitals,  
9 healthcare, banking, financial, secondary  
10 education colleges and universities, local and  
11 state governments.

12 Although the name "FirstLight" may be  
13 less familiar to you, it may be helpful for you  
14 to know that FirstLight is composed of  
15 companies that five or ten years ago operated  
16 independently, including, in New Hampshire,  
17 BayRing Communications, Teljet, segTEL,  
18 Sovernet, 186 Communications, and New Hampshire  
19 Optical Systems. So, these are companies that  
20 grew up in New Hampshire and neighboring states  
21 and invested heavily in networks over the last  
22 ten to twenty years.

23 The Company does evaluate additional  
24 service opportunities on a business case basis,

1 often with demanding timeframes for  
2 installation of service. That's why the pole  
3 attachment rules, and particularly the  
4 make-ready intervals and the ability to enter  
5 at reasonable terms and conditions are so  
6 important to our business.

7 Turning to the rule, since the State  
8 of New Hampshire has asserted state regulatory  
9 authority over pole attachments, an  
10 administrative rule is beneficial and it's an  
11 effective way to articulate the state's  
12 policies regarding utility pole attachments.  
13 Rule 1300 established a procedural and policy  
14 framework under which pole owners and entities  
15 seeking to attach to those poles may negotiate  
16 agreements, under which the Commission will  
17 authorize or establish rental rates and other  
18 standard changes, and under which parties  
19 unable to reach agreement may request the  
20 Commission resolve disputes.

21 FirstLight therefore supports  
22 readoption of Rule 1300, for the most part it  
23 supports the amendments proposed, and in a few  
24 instances recommends slight changes as we'll

1 explain next.

2 Going through the rule section by  
3 section:

4 Section 1301.02, about  
5 "Applicability", in this section the Commission  
6 proposes to add language that would expressly  
7 apply Rule 1300 to owners of poles that are  
8 providers of VoIP service or IP-enabled  
9 service. FirstLight supports this amendment,  
10 as it eliminates any doubt that the pole-owning  
11 voice providers that rely exclusively on VoIP  
12 or IP-enabled services would be subject to Rule  
13 1300.

14 In Section 1302, the Commission is  
15 proposing to add a definition of "excepted  
16 local exchange carrier" and use that phrase in  
17 other sections of the rule. We support  
18 incorporation of this definition and term into  
19 Rule 1300. It brings the rule up-to-date with  
20 the carrier classifications enacted in New  
21 Hampshire law and PUC rules after the last  
22 revision of Rule 1300. As a practical matter,  
23 its incorporation appears to maintain a *status*  
24 *quo* in terms of which entities are subject to

1 or have rights or responsibilities under Rule  
2 1300.

3 Also to Section 1302, the proposed  
4 amendments would add definitions of "wireless  
5 service providers" and "information service  
6 providers". FirstLight supports incorporation  
7 of these definitions into rule 1300. Both  
8 classes of service providers presently and will  
9 continue to advance the State of New  
10 Hampshire's objectives of promoting  
11 availability of broadband, internet access, and  
12 wireless communication services.

13 Nondiscriminatory access to utility poles  
14 facilitates development of facilities by these  
15 providers. So, their inclusion in the rule,  
16 the recognition is important.

17 In Section 1302.06, the proposed rule  
18 would add -- would reference wireless service  
19 providers. And I'll just add that placement of  
20 wireless facilities on utility poles can offer  
21 less expensive, faster, and visually less  
22 intrusive alternative to siting siting  
23 wireless facilities on stand-alone tower  
24 structures. So, articulating the right to

1 place those facilities on utility poles in New  
2 Hampshire should facilitate negotiation of pole  
3 attachment agreements between pole owners and  
4 wireless providers, and reduce the barrier -- a  
5 barrier to deployment of wireless facilities  
6 and result in improved wireless services in  
7 this state.

8 To Section 1303.01(c), the Commission  
9 added language that addresses a pole owner's  
10 obligation to consider alternatives. As I read  
11 this, it seemed to be an inverse restatement of  
12 the Federal Code 47 U.S.C. Section 224(f),  
13 which says a utility shall provide  
14 nondiscriminatory access to any pole owned by  
15 it, yet cannot deny such access on a  
16 nondiscriminatory basis where there is  
17 insufficient capacity or for reasons of safety,  
18 reliability, and generally applicable  
19 engineering purposes.

20 In general, most instances of  
21 insufficient capacity, or safety or reliability  
22 concerns, can be addressed in the make-ready  
23 process through placement of taller poles,  
24 rearrangement of existing plant, using

1 non-conventional attachment methods, or safe  
2 and reasonable compromises to the normal  
3 attachment clearances, or some combination of  
4 the foregoing. So, if alternatives exist that  
5 do not compromise safety and reliability, and  
6 the entity requesting attachment is willing to  
7 pay the make-ready charges, there's no good  
8 reason for a pole owner to deny a request for  
9 attachment.

10 We're not aware that this has  
11 happened. Nonetheless, expressly stating that  
12 the pole owners have an obligation to identify  
13 and offer alternatives will proactively require  
14 pole owners to do so, and this would affirm the  
15 requirement under the Federal statute.

16 In Section 1303.07(c), there's  
17 language added about change about cost  
18 responsibility for correcting non-compliant  
19 existing conditions. In general, this section  
20 of the rule, even as it exists now, it  
21 establishes an important concept, one that  
22 should be maintained in the rule, namely, that  
23 the party presenting -- the party requesting a  
24 new attachment should not bear responsibility

1 for correcting non-compliant conditions that  
2 predated the new entity's request.

3 The proposed refinement here, which  
4 would change "shall not be shifted to the  
5 entity seeking to add an attachment", to "shall  
6 not be assessed or imposed on the entity  
7 seeking to add an attachment" I think is  
8 beneficial. It just seems to more plainly  
9 state the Commission's intent, and we support  
10 this change to the rule.

11 In Section 1303.09, it has to do with  
12 "Location of Attachments", as I understand it,  
13 the Commission added language that would  
14 preclude a pole owner from denying a request to  
15 attach wireline facilities to a pole that's  
16 already occupied by a wireless facility. And  
17 this modification should preempt any such  
18 denial.

19 Just as the opposite holds true,  
20 i.e., that a wireless facility should be  
21 allowed on a pole of wireline facilities, as  
22 long it doesn't violate any safety codes,  
23 there's no good policy rationale for declaring  
24 any utility pole to be the exclusive domain of

1 wireless facilities. So, this -- I think  
2 that's a positive change to the rule.

3 Sections 1303.10 and 11 of the rule  
4 address "Boxing of Poles, and Use of Extension  
5 Arms". The Commission has not proposed to  
6 amend this subsection of Rule 1300. It's  
7 nonetheless worth noting that -- noting that,  
8 if there's a bias in the existing language,  
9 that the Commission might consider amending in  
10 the future, or even now, if you think it's  
11 appropriate. The bias stems from the phrase  
12 "as defined in the company's written procedures  
13 and methods". So, it's common for pole owners  
14 to employ *ad hoc* cable positions and attachment  
15 configurations for their own attachments, when  
16 they see it expedient. But that doesn't mean  
17 that those methods are necessarily compliant or  
18 described in the company's written procedures.

19 So, at a minimum, I think that the  
20 benchmark for Rule 1300, with regard to boxing  
21 or extension arms, should be the pole owner's  
22 joint -- their practice, not what the written  
23 procedures say.

24 There's a -- the Maine PUC recently

1 revised its pole attachment and went one step  
2 further, establishing a presumption that would  
3 be unreasonable for the terms and conditions of  
4 a negotiated pole attachment agreement to  
5 prohibit boxing "which can safely" -- "which  
6 can be safely accessed by emergency equipment  
7 and bucket trucks or ladders, provided that  
8 such technique comply with the requirements of  
9 applicable codes." If you wanted to review the  
10 rule, it's Section 65-407 of the Maine Code,  
11 it's Chapter 880 of the PUC's rule.

12 So, the Maine revised rule also  
13 establishes similar presumptions regarding  
14 prohibitions on the use of extension arms,  
15 attaching cable below the lowest existing  
16 attachments, pole-top wireless attachments.  
17 The rule allows a pole owner or joint-use  
18 entity to overcome presumption by "presenting  
19 clear and convincing evidence that the dispute  
20 involves unique circumstances in which applying  
21 the presumption would produce an unreasonable  
22 or unsafe result."

23 If the Commission wishes to do more  
24 to promote economic and faster deployment of

1           communications services, Rule 1300 ought to  
2           presume that measures that would enable a  
3           carrier to do that are permissible, and allow  
4           restriction of those measures only if unsafe or  
5           unreasonable. Rule 1300 in its current form  
6           likely does the opposite, given that the  
7           incumbents, rather than entrants, dictate the  
8           written methods and procedures that apply to  
9           poles.

10                         Section 1303.09, has to do with the  
11           "Location of Attachments" on poles,  
12           specifically, the "Lowest Attachment Position".  
13           The Commission has not proposed to amend this  
14           section of the rule. It grants the current  
15           lowest attacher the right to move its cables  
16           and attachments lower yet on the pole, rather  
17           than allowing another carrier to come in below  
18           it. This option has substantial benefit to the  
19           current lowest attacher, as it enables easier  
20           access to repair -- for repair, allows them to  
21           use smaller equipment, pole trucks, and it  
22           gives them much greater ease in overlashing to  
23           existing cables. For these reasons, the  
24           incumbent attacher typically exercises this

1 option to move down, rather than have another  
2 cable below it. A competitively neutral rule  
3 would not even grant the incumbent this  
4 preemptive right to move its attachments down.  
5 But notwithstanding the facts that the  
6 incumbent benefits from moving its attachments  
7 down, and that the requesting party is denied  
8 the advantage of the lower position, the  
9 current rule nonetheless imposes 40 percent of  
10 the costs on the party seeking to attach.

11 Since the moves are necessitated only  
12 by the incumbent's preference to be in the  
13 bottom position, at a minimum the rule should  
14 specify that the incumbent would pay its own  
15 costs to move its own cables. So, we realize  
16 that the Commission has considered this issue  
17 before, but suggest that the Commission revisit  
18 it in the future, or even consider the change  
19 now.

20 Section 1303.12 of the rule has to do  
21 with "Make-Ready Work Timeframes". And I'll  
22 just say that I support the comments of  
23 CenturyLink regarding this section. I'd also  
24 add that the proposed edits to the first

1 section of this subsection that seem to clarify  
2 that the responsibility for timely completion  
3 of make-ready rests with the pole owners, not  
4 just the make-ready that the pole owner has to  
5 do on its own facilities, but that of third  
6 parties. This is a helpful change to all  
7 concerned, since the other attachers have  
8 licenses with the pole owners, not with one  
9 another. Timely and efficient make-ready  
10 relies on communications and good faith  
11 coordination among all attachers. But when the  
12 timelines are not met, the licensors, i.e., the  
13 owners of the poles, have primary  
14 responsibility to ensure timely completion.  
15 And it's right for Rule 1300 to affirm that.

16 Last, 13 -- Section 1304.06 concerns  
17 "Rate Review Standards". FirstLight supports  
18 deletion of the reference to a superseded 2007  
19 FCC rate formula. The FCC's rate formula's  
20 methodologies have evolved since then, and the  
21 State of New Hampshire will benefit if the  
22 Commission's rate review standards for pole  
23 attachments evolve along with the FCC's. That  
24 said, the FCC's pole rate regulations may well

1 be amended again, leaving the Commission with a  
2 reference to a superseded FCC rule. To the  
3 extent that New Hampshire's administrative  
4 rules permit, the Commission might consider not  
5 replacing the reference to the old 2007 FCC  
6 regulation with a reference to the current 2017  
7 regulation, in other words, not referencing any  
8 regulation of any specific issue date.

9 Those are the comments I'd offer.  
10 I'd be happy to answer any questions you may  
11 have.

12 CMSR. BAILEY: Mr. Lackey, early on  
13 in your comments, you said something that I  
14 either didn't hear or didn't understand about  
15 cellular attachments and attachments to their  
16 own facilities or something like that?

17 MR. LACKEY: I think I was referring  
18 to Section -- see if I can find it. But there  
19 was a section of the rule that seemed to say  
20 that "a wireline attachment shall not be denied  
21 to a pole that has a wireless attachment on  
22 it". So, as I saw it, there's a scenario where  
23 there's a utility pole, and currently it only  
24 has a wireless facility on it. And another

1 carrier comes along, a wireline carrier, and  
2 says "I'd like to attach a cable to that pole."  
3 The addition to the rule, as I understood it,  
4 said that "that can't be" -- "that attachment  
5 can't be denied". In other words, there is no  
6 such thing as an exclusively wireless pole.

7 So, I think that's maybe the section  
8 that you're referring to.

9 CMSR. BAILEY: Okay. Do you think  
10 that these rules or our jurisdiction would  
11 apply to a pole owned by a wireless carrier?

12 MR. LACKEY: If they are -- well, I'm  
13 not a lawyer. So, maybe I shouldn't answer  
14 that question.

15 CMSR. BAILEY: Okay. All right.

16 MR. LACKEY: I was under the  
17 impression that if they were -- that any  
18 utility pole was. But, if a wireless company  
19 is not subject to the Commission rules about  
20 poles, then maybe that shouldn't be in the rule  
21 at all.

22 CMSR. BAILEY: Okay. I think I know  
23 what you're talking about, and I don't think I  
24 read the rule the same way you do.

1 MR. LACKEY: Okay.

2 CMSR. BAILEY: But I'll think about  
3 that. Thank you.

4 MR. LACKEY: All right. Well, that  
5 was my concern. So, if it's -- if I  
6 misinterpreted it, you're in good shape.

7 CMSR. BAILEY: Okay. Thanks.

8 CHAIRMAN HONIGBERG: All right.  
9 Thank you, Mr. Lackey.

10 MR. LACKEY: Yes. Thank you.

11 CHAIRMAN HONIGBERG: Paul Phillips,  
12 to be followed by Patrick Taylor and Mark Dean.

13 MR. PHILLIPS: Thank you, Mr.  
14 Chairman and Commissioners. I am Paul  
15 Phillips. I'm an attorney with Primmer, Piper,  
16 Eggleston & Cramer, in Manchester, New  
17 Hampshire. And I'm appearing today on behalf  
18 of the New Hampshire Telephone Association and  
19 its 11 constituent members. Those companies  
20 are Bretton Woods Telephone Company; Dixville  
21 Telephone Company; Dunbarton Telephone Company;  
22 Granite State Communications; the two operating  
23 entities of FairPoint Communications, which are  
24 Northern New England Telephone Operations, LLC,

1 and Northland Telephone Company of Maine; and  
2 the five operating entities of TDS Telecom in  
3 New Hampshire, which are Hollis Telephone  
4 Company, Kearsarge Telephone Company, Merrimack  
5 County Telephone Company, Union Telephone  
6 Company, and Wilton Telephone Company.

7 And we will also be filing written  
8 comments within the Commission's timeframe.

9 The NHTA member companies are all  
10 incumbent local exchange carriers that have  
11 been serving for a long, long time, offering  
12 both telecommunications and broadband services  
13 across the State of New Hampshire. They're all  
14 independently owned businesses. They range in  
15 size, from Dixville Telephone Company, which  
16 operates up in Dixville Notch, to FairPoint  
17 Communications, which serves exchanges all  
18 across the state.

19 NHTA has participated actively in  
20 this rulemaking from the outset. We've  
21 provided written comments previously to the PUC  
22 Staff, and we've also provided responses to the  
23 Staff's questions. We participated in the  
24 October 6th, 2017 technical workshop, along

1 with a large number of other parties that have  
2 an interest in pole attachments in the state.

3 In each of its oral and written  
4 comments to date, and we expect in our written  
5 comments that are forthcoming, NHTA has asked  
6 the PUC to readopt the existing rule without  
7 material changes.

8 During the October 6th technical  
9 workshop, representatives from all of the  
10 industries that are involved in pole attachment  
11 arrangements took part, and they reported that,  
12 under the existing rules, there have been no  
13 disputes around the rates, terms or conditions  
14 of pole attachments for several years.

15 There was widespread agreement that  
16 the current rules are working well. Attachers  
17 and pole owners are able to reach agreement on  
18 pole attachments without the need for PUC  
19 involvement.

20 Upon specific questioning by PUC  
21 Staff at the workshop, the industry parties  
22 emphasized that attachment rates in New  
23 Hampshire are not limiting broadband expansion.  
24 And NHTA has pointed out in its written

1           comments that New Hampshire ranked number one,  
2           the number one best state in internet access in  
3           the most recent U.S. News and World Report  
4           rankings from last February of 2017. So, in  
5           our view, there's no reason to make any  
6           substantive change to the rules.

7                        I'm not going to go into the details  
8           of our comments, but I just -- I want to just  
9           make two points about that.

10                       We're concerned that the substantive  
11           changes that are reflected in the rules could  
12           disrupt what has been a very amicable and  
13           peaceable contract period over the last many  
14           years between attachers and pole owners. The  
15           parties in the workshop didn't see a need for  
16           those changes. We would like the PUC to  
17           explain its rationale for those changes. It's  
18           clear to us that the Commission has a differing  
19           view from NHTA, but we have not seen that  
20           rationale explained thus far. So, we would  
21           just ask for an understanding, a better  
22           understanding of what the Commission believes  
23           it's achieving with the substantive changes  
24           it's proposing.

1           The UNH concerns about large-scale  
2 pole projects we believe are not well-founded.  
3 It is true that there were issues that arose  
4 during the Broadband Technology Opportunities  
5 Program, the BTOP Program, back in 2011 through  
6 2013. That was a one-off project that involved  
7 a simultaneous request to attach to over 23,000  
8 poles in a relatively short time period. And  
9 even in that instance, those disputes were  
10 resolved ultimately by mutual agreement of the  
11 parties.

12           New Hampshire has not seen a project  
13 of that scope in the ensuing years. And it  
14 does not appear that a project of that scope is  
15 likely to arise in the foreseeable future.

16           The second point I'd like to make is  
17 with respect to the PUC's fiscal impact  
18 statement. It is concerning to NHTA that the  
19 fiscal impact statement claims that there is no  
20 difference in cost when comparing the proposed  
21 rules to the existing rules. And under the  
22 category of costs and benefits to independently  
23 owned businesses, the PUC says there is none,  
24 no costs and benefits to be reported.

1           We've heard this morning that the  
2           proposed rule does update a reference in the  
3           rule from the FCC's 2007 rate formula to the  
4           2017 rate formula. And while it's true that  
5           these FCC rate formulae are only to be  
6           considered, they're not to be imposed, they're  
7           not required to be used, nonetheless there is,  
8           obviously, a reason for the PUC's change in  
9           this regard. It is a nontechnical amendment,  
10          it is a material change to the rule.

11           We would ask the PUC to consider that  
12          the impact of that rule appears to us at least  
13          to be to try to guide pole attachment parties  
14          who are contracting for rates toward a lower  
15          set of rates, which is what the 2017 FCC rate  
16          formula would produce.

17           And if that is the case, we think  
18          that there would be -- there is a material  
19          impact, a fiscal impact on independently owned  
20          businesses, like NHTA. So, we would like the  
21          PUC to acknowledge that in its fiscal impact  
22          statement.

23           The final point I want to make is  
24          that we continue to believe that there's a

1 jurisdictional issue with respect to wireless  
2 providers and facilities. We note that the PUC  
3 has included language in its rules, in its  
4 proposed rules regarding wireless facilities.  
5 Clearly, the PUC has a different view on that  
6 than NHTA does. But we would ask the PUC to  
7 explain how it navigates that jurisdictional  
8 issue, especially the difference statutorily  
9 between wireless attachers -- or, wireless  
10 facility attachments and IP-enabled service  
11 attachments. IP-enabled services are also  
12 clearly jurisdictionally exempt, but there's a  
13 clear provision in the SB 48 language for pole  
14 attachments. There's not a similar provision  
15 with respect to the jurisdictional exemption of  
16 wireless facilities. So, we would just want to  
17 understand better how the PUC gets there.

18 Thank you.

19 CMSR. BAILEY: So, you don't think  
20 that small-scale deployment is an attachment to  
21 a pole?

22 MR. PHILLIPS: Oh, we do. Oh,  
23 absolutely.

24 CMSR. BAILEY: Who is that different

1 than a broadband attachment? We're not  
2 regulating the wireless carrier, we're  
3 regulating the pole owner.

4 MR. PHILLIPS: Well, and we'll  
5 provide written comments about this, but as we  
6 said in our -- I believe it was our second set  
7 of written comments, the pole attachment rules  
8 which provide, you know, rights and privileges  
9 also come with a set of regulatory obligations.  
10 And, so, the analogy we drew was to the RCC  
11 Atlantic ETC filing back in 2003, where RCC  
12 Atlantic was looking for an ETC designation,  
13 which is clearly a regulatory privilege, it  
14 does come with some regulatory obligations.  
15 And the PUC took the position that they simply  
16 could not even entertain that petition because  
17 of the wireless exemption under the statute.  
18 We think that's analogous here.

19 The difference between the wireless  
20 attachment and the broadband attachment is  
21 that, in the SB 48 language that excludes  
22 broadband from the PUC's jurisdiction, there's  
23 a clear carve-out for pole attachment  
24 regulations.

1 CMSR. BAILEY: Okay. I understand  
2 your argument.

3 On your comments about the fiscal  
4 impact, is the fiscal impact is the result of  
5 the potential that, if all the pole attachment  
6 rates were renegotiated, your clients' revenue  
7 would be reduced? Or, is it the work in  
8 renegotiating those attachment agreement?

9 MR. PHILLIPS: Well, I think it would  
10 be both. I think we're, you know, most  
11 seriously considering the revenue reduction  
12 that would result from renegotiated rates,  
13 particularly in a context when the parties in  
14 the technical workshop made clear there really  
15 is no rate issue, and has been no rate issue in  
16 New Hampshire. I believe the statement was  
17 that "it's not been a barrier to broadband  
18 deployment in New Hampshire."

19 CMSR. BAILEY: That's good. But can  
20 you -- isn't the FCC rate formula based on  
21 cost?

22 MR. PHILLIPS: It is. But we think  
23 that, when New Hampshire adopted the reverse  
24 preemption or invoked the reverse preemption,

1 they were trying to make a New  
2 Hampshire-specific rate formula. And really,  
3 the emphasis should be on contracting. And  
4 what the PUC has heard from the parties who are  
5 actually engaged in these contracts is that  
6 they are able to reach contractually agreed  
7 upon rates that are mutually satisfactory, and  
8 that those rates have worked well.

9 So, we're just concerned that, in an  
10 oblique way, without acknowledging that there  
11 may be an impact, the PUC is trying to  
12 influence those discussions in a downward  
13 direction.

14 CMSR. BAILEY: Okay. Thanks.

15 CHAIRMAN HONIGBERG: Thank you,  
16 Mr. Phillips.

17 MR. PHILLIPS: Thank you.

18 CHAIRMAN HONIGBERG: Patrick Taylor,  
19 to be followed by Mark Dean and Susan Geiger.

20 MR. TAYLOR: Good afternoon,  
21 Commissioners. Thank you. I did put my name  
22 down to speak today, but, to the extent that  
23 Unitil, or Unitil Energy Systems, in  
24 particular, has comments, we're going to

1 reserve those for the written portion of the  
2 comment period.

3 So, I'll just say that I do echo  
4 Attorney Phillips' comments regarding the rules  
5 as they exist in New Hampshire. I think that  
6 they currently allow a lot of flexibility  
7 between the parties to negotiate amongst  
8 themselves, and reducing the need for  
9 regulatory intervention. So, I do agree with  
10 him on that point.

11 But, to the extent we have comments,  
12 I'll submit them in writing.

13 CHAIRMAN HONIGBERG: Thank you, Mr.  
14 Taylor.

15 Mark Dean, to be followed by Susan  
16 Geiger and Brian Buckley.

17 MR. DEAN: Good afternoon. My name  
18 is Mark Dean, and I represent the New Hampshire  
19 Electric Cooperative. I was going to begin by  
20 saying "I'll be brief", but, compared to  
21 Mr. Taylor, I don't think I'll quite meet that  
22 test.

23 CHAIRMAN HONIGBERG: Give it a whirl,  
24 Mr. Dean.

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*[Laughter.]*

MR. DEAN: I'll give it a try. I'll give it a try.

The Co-op would, again, echo the comments, in a general sense, that we feel that the existing rules have worked well, and would certainly favor no substantive changes. That said, there isn't much in the proposed rules that give the Co-op a lot of heartburn.

But there are two closely related items. And I think they're really almost the same issue, but in two different places. And I'm referring to 1303.01 and 1303.09.

And, so, first, for 1303.01, it's the addition of the language that says "Such access shall include wireless facility attachments, including those above the communications space on the pole." And it's really the same words here, as in the other section, that have caused some confusion and concern for the Co-op, and that is this -- the phrase "above the communications space".

The rules themselves do not define "communication space" or point to the

1 definition of it in the -- I think it would  
2 probably be in the Electrical Code, I believe  
3 it is there. But the term "above the  
4 communication space", the real question is,  
5 does that mean the area above the communication  
6 space that is also not in the electrical space  
7 or does it include the electrical space?

8 And the concern is that the Co-op's  
9 policy has been not to permit, and I don't know  
10 that anyone has sought attachments actually  
11 within the Cooperative's electrical space;  
12 adjacent to, above, below transformers,  
13 energized lines, etcetera.

14 And the concern is that this language  
15 could be broadly read -- read to say "you can't  
16 say you're not" -- that "you're disallowed from  
17 the electrical space". And frankly, that has  
18 been the Co-op's policy.

19 I recognize there is the subsections  
20 below this that say, if you have "safety,  
21 reliability, engineering" reasons, that's an  
22 exception. But, at least from the Co-op's  
23 engineering perspective through the years, it's  
24 essentially been a blanket statement that it is

1 inherently unsafe to have other entities  
2 attaching their equipment right in the higher  
3 voltage electrical area.

4 And if it's the Commission's intent  
5 to say, you know, "Above the communication  
6 space, including the electrical space, and if  
7 you've got a gripe about that, electric  
8 utility, then come in and prove to us that it  
9 is unsafe." If that's the position, I think we  
10 just need to know it.

11 And I guess I would echo some of the  
12 other comments, if that's the position, I do  
13 believe that will lead to disputes that you're  
14 going to have to resolve.

15 And really, if you flip to 1303.09,  
16 again, "No attaching entity shall be denied  
17 attachment solely because a wireless facility  
18 is to be located above the communications space  
19 on the pole." Again, same issue. I think the  
20 only difference that adding "wireless facility"  
21 to the phraseology is this vision of a pole-top  
22 antenna, conceivably. Is that -- I guess  
23 there's a question, is there any space above  
24 the electrical space that's actually on the

1 pole?

2 And I think, again, the same policy  
3 concerns the Co-op would have, because, by  
4 definition, if you put a antenna on top of the  
5 pole, there are facilities running vertically  
6 down the pole completely through the electrical  
7 space to some other access lines or whatever it  
8 is.

9 So, the Co-op is just concerned that  
10 the rule not create a new presumption. We  
11 understood, from comments that were made by  
12 people in the room during the work session,  
13 that, in different places, and maybe  
14 increasingly so, wireless antennas are being  
15 put on top of poles in the electrical space.

16 If there are entities that have that  
17 interest and approach the Co-op, and can show  
18 the Co-op why this is not a safety concern,  
19 then that can be -- that can be dealt with.  
20 But concerned that we're creating a presumption  
21 that the electric utility has to come in and  
22 prove somehow that it's unsafe to have  
23 unrelated entities in the higher voltage  
24 electric area.

1           Those are really the -- that's really  
2           the primary concern. I would just add, sort of  
3           in response to some other comments, I think it  
4           was CenturyLink seemed to be saying you should  
5           be adopting the FCC rates and rules. And I was  
6           certainly present the last time the pole  
7           attachment statute was amended. And while I  
8           think there is language here in the statute  
9           that says "let the parties negotiate", there's  
10          also language that says you can "adopt rules  
11          that may include rates and formula". But my  
12          recollection of that entire debate at the  
13          Legislature was dominated by "should you adopt"  
14          -- "just adopt the FCC rules and rates or  
15          should you go" -- "continue to go a New  
16          Hampshire-specific route?" And I think the way  
17          the legislation was written, it was to go a New  
18          Hampshire-specific route.

19                   CHAIRMAN HONIGBERG: Commissioner  
20           Bailey.

21                   CMSR. BAILEY: So, there are a lot of  
22           places that are allowing pole-top attachments.  
23           And I don't think there's any space in between  
24           the communications and the electric, maybe

1           40 inches to the neutral.

2                   But, if there are ways to attach to  
3 the top of a pole safely, and consistent with  
4 the National Electrical Safety Code, why  
5 shouldn't we have a policy that allows -- a  
6 rule that allows that?

7                   MR. DEAN: I think for the same  
8 reason you have -- I mean, you could just have  
9 a rule that says "anybody can" -- you know,  
10 looking at, for example, the boxing rules, "if  
11 there's a way to do it, you have to do it."  
12 But that's not the approach that you've taken  
13 in the rules. You've said, "well, if the  
14 utility doesn't allow boxing, doesn't do it  
15 themselves, and that's their system and their  
16 practice, there's reasons for that. They have  
17 made a safety determination. And that's all  
18 right, as long as you're nondiscriminatory in  
19 your approach."

20                   And I would certainly agree that, to  
21 the extent there are -- whether you want to  
22 call it "boxing" or "arms" or "antenna" on the  
23 top of a pole, that access should be  
24 nondiscriminatory.

1           And I'm just saying, I don't think  
2           that, in my view, to me this is a very  
3           substantive change, in that I think it is sort  
4           of flipping it. It's creating a presumption  
5           that it is safe to do it, because they have  
6           done it elsewhere. And to me, that's an  
7           evidentiary argument that, you know, I haven't  
8           seen yet, nor do I think you've seen yet.

9           And, so, you know, to me, I would  
10          leave it as it is and not insert that, what I  
11          consider essentially a new heightened  
12          attachment right for attachers.

13          I mean, it may be that entities come  
14          forward and say "here's what we're doing",  
15          explain it, you know, --

16          CMSR. BAILEY: And you say "no".

17          MR. DEAN: -- "this is why it works  
18          great." And --

19          CMSR. BAILEY: And you saw "No. It's  
20          not our policy."

21          MR. DEAN: That's possible. And  
22          there's nothing in here that says that --  
23          there's nothing in the rule that says the  
24          utility has an absolute veto right over

1 attachments in the electrical space. But, to  
2 do it otherwise, they can come in and say  
3 "Look, we're allowed to attach. It's above the  
4 communication space. We're allowed to attach.  
5 And you tell us why it's unsafe." They're the  
6 ones that are doing the work, presumably,  
7 elsewhere. I think that they can -- they can  
8 make the argument, if there's an argument to be  
9 made, that our concerns are, you know, are not  
10 warranted.

11 CMSR. BAILEY: So, could we write a  
12 rule that said something like "they can't be  
13 denied access above the communication space, as  
14 long as they can demonstrate that the  
15 installation would be safe and consistent with  
16 the Code"?

17 MR. DEAN: Well, you could write that  
18 rule, yes.

19 CMSR. BAILEY: No. I mean, would  
20 that address your concerns?

21 MR. DEAN: If it puts it on them, I  
22 think that that may address the concern. I'd  
23 have to look at the language.

24 CMSR. BAILEY: Okay. All right.

1 MR. DEAN: But that is the issue that  
2 I'm trying to address.

3 CMSR. BAILEY: Okay. I think  
4 understand your concern. Thank you.

5 CHAIRMAN HONIGBERG: Thank you,  
6 Mr. Dean.

7 Susan Geiger, to be followed by Brian  
8 Buckley.

9 Carol Miller, do you want to speak?  
10 You had a "maybe" down here.

11 MS. MILLER: I'll defer. Thank you.

12 MS. GEIGER: Good afternoon, Mr.  
13 Chairman and members of the Commission. I'm  
14 Susan Geiger, from the law firm of Orr & Reno.  
15 I represent the New England Cable &  
16 Telecommunications Association, Inc. And NECTA  
17 appreciates the opportunity to provide these  
18 comments on the proposed pole attachment rules.

19 NECTA, at the outset, would echo and  
20 agree with the comments of Mr. Phillips and  
21 Mr. Taylor and Mr. Dean, insofar as they  
22 believe that the current pole attachment rules  
23 are working well, and that the current  
24 statutory, regulatory, and contractual scheme

1 under which pole owners and pole attachers are  
2 operating is okay, and therefore no substantive  
3 changes to the rules need to be made at this  
4 time.

5 Furthermore, because of the ongoing  
6 FCC review of pole attachment issues, NECTA  
7 believes that it would be inappropriate and  
8 potentially counterproductive to promulgate  
9 substantive rule changes in New Hampshire  
10 before the FCC has finished its work in this  
11 area.

12 And while NECTA does not oppose  
13 minor, non-substantive changes to the rules, we  
14 do oppose substantive rule changes at this  
15 time. And I'll explain why.

16 If the Commission does decide to move  
17 forward with pole attachment rules prior to the  
18 completion of the FCC docket, NECTA believes  
19 that the proposed rules that are under  
20 consideration right now should not be adopted,  
21 because they impermissibly broaden the scope of  
22 the Commission's statutory authority. NECTA  
23 would oppose any rule changes that expand the  
24 Commission's authority over pole attachments

1 beyond that which is established in the  
2 statute, RSA 374:34-a.

3 In particular, NECTA opposes, on  
4 legal grounds, the proposed change to the  
5 definition of "pole" reflected in the initial  
6 rules proposal at Puc 1302.09. The amended  
7 definition is legally flawed, because it  
8 differs from the statutory definition of "pole"  
9 contained in RSA 374:34-a, I.

10 It is noteworthy that the current  
11 definition of "pole" contained in the  
12 Commission's existing pole attachment rules  
13 expressly references and correctly quotes the  
14 statutory definition of "pole", which is this:  
15 "Pole" means "pole" as defined in RSA 374:34-a,  
16 I, namely "any pole, duct, conduit or  
17 right-of-way that is used for wire  
18 communications or electricity distribution and  
19 is owned in whole or in part by a public  
20 utility, including a rural electric cooperative  
21 for which a certificate of deregulation is on  
22 file with the commission pursuant to RSA  
23 301:57."

24 The initial rules proposal, however,

1 eliminates the reference to "RSA 374:34-a, I",  
2 and adds to the end of the existing definition  
3 the following words that do not appear in the  
4 statute: "Or is owned in whole or in part by a  
5 provider of "VoIP service" or "IP-enabled  
6 service", as such terms are defined in RSA  
7 362:7, I."

8 Adding this new language to the  
9 statutory definition of "pole" is improper as a  
10 matter of law, so NECTA opposes it.

11 Long-standing New Hampshire case law holds  
12 that, in adopting rules, state boards and  
13 commissions and agencies may not add to,  
14 subtract from, or in any way modify statutory  
15 law.

16 Because the proposed language of  
17 1302.09 would significantly change the  
18 statutory definition of "pole" to add words  
19 that are not in the statute, the proposed  
20 amendment is invalid under state law and  
21 therefore should not be adopted.

22 In addition to the fact that the  
23 definition of "pole" as proposed is  
24 inconsistent with the statutory definition,

1 NECTA opposes the new definition, because it  
2 has the effect of impermissibly broadening the  
3 Commission's scope over VoIP and IP-enabled  
4 service providers.

5 RSA 374:34-a, I, clearly states that  
6 the term "pole" as used in that statute means  
7 "any pole, duct, conduit or right-of-way that  
8 is used for wire communications or electricity  
9 distribution and is owned in whole or in part  
10 by a public utility". Because RSA 362:7, II,  
11 clearly states that VoIP and IP-enabled service  
12 providers are not public utilities, their  
13 facilities are not "poles" within the meaning  
14 of the statute, and therefore are not subject  
15 to the regulatory authority that applies under  
16 RSA 374:34-a, II through VII.

17 By expanding the definition of "pole"  
18 to include facilities owned by VoIP and  
19 IP-enabled service providers, those providers  
20 are improperly subjected to the same access  
21 requirements as those owned by a public  
22 utility.

23 In addition, those providers would  
24 also be subjected to a Commission proceeding

1 regarding rates, charges, terms and conditions  
2 of attachments, it would be -- if attachers are  
3 unable to reach agreement with a pole owner.  
4 This is impermissible under the clear language  
5 of RSA 374:34-a, II, which limits the  
6 Commission's authority to regulate and enforce  
7 rates, charges, terms and conditions for pole  
8 attachments, to situations where the pole owner  
9 is unable to reach agreement with a party  
10 seeking pole attachments. Again, because the  
11 term "pole", as defined in the statute, is  
12 limited to facilities owned by a public  
13 utility, the proposed rules cannot expand the  
14 Commission's authority to include, for example,  
15 establishing rates, terms and conditions for a  
16 VoIP or IP-enabled service provider's poles,  
17 ducts, conduits, *etcetera*.

18 Where the Commission does have  
19 authority is under RSA 374:34-a, VIII, which  
20 spells out the Commission's regulatory  
21 authority over private entities, such as VoIP  
22 and IP-enabled service providers, that  
23 authority is limited to the regulation of  
24 "safety, vegetation management, emergency

1 response, and storm restoration requirements  
2 for poles, conduits, ducts, pipes, pole  
3 attachments, wires, cables, and related plant  
4 and equipment of...private entities located  
5 within public rights-of-way and on, over, or  
6 under state lands and water bodies."

7 So, the Commission has to read the  
8 entirety of 374:34-a to determine the extent of  
9 its regulatory authority. And to the extent  
10 that the proposed amendments to the 1300 rules  
11 expand the Commission's authority over private  
12 entities beyond the limited authority stated in  
13 374:34-a, VIII, which I just quoted, the  
14 proposed amendments are invalid.

15 In addition to the more expansive  
16 definition of "pole", NECTA also objects to the  
17 proposed Rule 1301.02(b), which states that the  
18 rules apply to owners of poles that are VoIP  
19 and IP-enabled service providers. Currently,  
20 the existing 1300 rules apply to just two types  
21 of entities: Public utilities that own in  
22 whole or in part any pole used for wire  
23 communications or electric distribution; and  
24 (b) attaching entities with facilities attached

1 to such poles or seeking to attach facilities  
2 to such poles.

3 However, the new rule seeks to add a  
4 third category: Owners of poles in whole or in  
5 part that are providers of VoIP service or  
6 IP-enabled service, as such terms are defined  
7 in RSA 362:7, I.

8 NECTA submits that proposed Rule  
9 1302.02(b) should not be adopted, because it  
10 improperly expands the Commission's pole  
11 attachment authority beyond that stated in RSA  
12 374:34-a. As I explained previously, 374:34-a,  
13 VIII, expressly limits the Commission's  
14 regulatory authority over private entities or  
15 nonpublic utilities to the regulation of  
16 "safety, vegetation management, emergency  
17 response, and storm restoration requirements"  
18 for those facilities that are "located within  
19 public rights-of-way and on, over, or under  
20 state lands and water bodies".

21 Therefore, to the extent that the  
22 rules are intended to apply to entities other  
23 than public utilities and attaching entities,  
24 the rules must reflect the very limited

1 authority expressed in 374:34-a, VIII.

2 In addition to the scope of the  
3 authority arguments, NECTA would like to point  
4 out that expanding the Commission's authority  
5 over poles in the manner proposed could nullify  
6 the state's jurisdiction over pole attachments.  
7 The adoption of pole access obligations that  
8 are contrary to state law has ramifications  
9 under federal law. Such adoption could nullify  
10 the State of New Hampshire's certification to  
11 regulate poles and return jurisdiction to the  
12 FCC.

13 The Federal Certification law  
14 provides that a state shall not be considered  
15 to regulate the rates, terms and conditions for  
16 pole attachments, unless the state has issued  
17 and made effective rules and regulations  
18 implementing the state's regulatory authority  
19 over pole attachments. Inasmuch as the  
20 proposed definition of "pole" and the  
21 applicability rule would extend pole access  
22 obligations and rate-setting beyond the scope  
23 of the state's regulatory authority, it would  
24 jeopardize the Commission's pole jurisdiction

1 under federal law. Accordingly, the proposed  
2 change to the definition of "pole" should not  
3 be made, and nor should the proposed rule  
4 regarding extending jurisdiction to VoIP and  
5 IP-enabled service providers as pole owners be  
6 adopted.

7 In addition, there are policy reasons  
8 that would militate against expanding the  
9 Commission's regulatory authority over VoIP and  
10 IP-enabled service providers beyond the legal  
11 arguments that I've just recited. In addition  
12 to being improper as a matter of law, the  
13 policy reasons that warrant not expanding the  
14 definition of "pole" and the applicability of  
15 the 1300 rules to impose the same access, rate  
16 and other requirements upon competitive  
17 providers of VoIP and IP-enabled services as  
18 those that apply to public utilities, is that  
19 public utilities own the vast majority of  
20 utility poles in New Hampshire, and pole  
21 attachment access obligations have  
22 traditionally applied to them because of their  
23 virtual monopoly control of pole networks. On  
24 the other hand, VoIP and IP-enabled service

1 providers are not public utilities. And they  
2 do not enjoy market power over pole resources,  
3 and they typically own minimal, if any,  
4 infrastructure. So, accordingly, sound public  
5 policy would warrant treating VoIP and  
6 IP-enabled service providers differently from  
7 public utility pole owners.

8 So, to deal with the issues that I  
9 raised, and that will be expounded upon in  
10 written comments that we intend to file by the  
11 deadline, NECTA would respectfully ask that the  
12 Commission, if it proceeds with adopting these  
13 rules, to change the initial rules proposal in  
14 three ways:

15 First, we would ask that the rule,  
16 which identifies parties to whom the rules  
17 apply, 1301.02(b), be deleted, and replaced  
18 with the language from 374:34-a, VIII, which  
19 clarifies and states that the rules would only  
20 apply to "public utilities and other private  
21 entities whose poles, conducts, ducts, pipes,  
22 pole attachments, wires, cables and related  
23 plant and equipment are located within public  
24 rights-of-way and on, over, or under state

1 lands and water bodies, for the limited purpose  
2 of regulating safety, vegetation management,  
3 emergency response, and storm restoration."

4 Second, we would ask that proposed  
5 Rule 1302.09 be changed to reflect the  
6 definition of "pole" that's contained in the  
7 statute RSA 374:34-a, I, and in the existing  
8 Rule 1302.08.

9 Lastly, a clarifying change we  
10 believe needs to be made to 1304.06(b). And we  
11 believe that the word -- that the phrase that  
12 states "In determining just and reasonable  
13 rates for all other attachments", the word  
14 "pole" should be inserted before the word  
15 "attachments", to clarify that the Commission's  
16 rate-setting authority relates only to pole  
17 attachments, and again, "pole" being defined as  
18 "structures that are owned by utilities".

19 NECTA appreciates very much the  
20 opportunity to appear before you this afternoon  
21 to provide these comments. And we'd be happy  
22 to answer any questions. Thank you.

23 CMSR. BAILEY: Thank you, Ms. Geiger.  
24 If the VoIP providers or some other provider

1 decided they were going to build their own  
2 infrastructure, and duplicate the pole network  
3 or triplicate the pole network, do you think  
4 that might have a safety impact in the  
5 right-of-way?

6 MS. GEIGER: If it has a safety -- I  
7 don't know, I can't answer that question in the  
8 abstract. But I think, based on my reading of  
9 the statute, the Commission would have the  
10 authority to regulate, for safety and storm  
11 restoration and emergency situations,  
12 vegetation management, those providers' poles  
13 that are located in the rights-of-way and on  
14 state land or over and under, you know, state  
15 land and public water.

16 CMSR. BAILEY: Could the  
17 Commission -- do you think the Commission could  
18 prevent duplication of networks, of pole  
19 infrastructure in the public right-of-way,  
20 because it may be a safety problem? Could we  
21 adopt a rule that says you can only have one  
22 set of poles in a road?

23 MS. GEIGER: I can't answer that  
24 question. The only thing that comes to mind is

1 I believe that there is a statute, and I can't  
2 cite it for you, that indicates that, if it's a  
3 state road, the Department of Transportation as  
4 exclusive authority over the rights-of-way, and  
5 if it's a town road, the municipality would  
6 have the authority. So, I think it would be up  
7 to those, those folks to decide what structures  
8 they allow in their rights-of-way and under  
9 what circumstances.

10 CMSR. BAILEY: But you've quoted  
11 repeatedly from the statute that says "the  
12 Commission shall retain its authority to  
13 regulate the safety for poles in the  
14 right-of-way"?

15 MS. GEIGER: Right. I mean, I was  
16 answering the question about whether or not a  
17 duplicate network could be constructed. And I  
18 think the construction decision rests with the  
19 DOT or with the municipality where in which the  
20 right-of-way is located.

21 What happens once those poles are  
22 installed, in terms of safety, I think the  
23 statute indicates that the Commission has  
24 safety authority, safety regulatory authority.

1 CMSR. BAILEY: Okay. Thank you.

2 CHAIRMAN HONIGBERG: Thank you,  
3 Ms. Geiger.

4 Mr. Buckley.

5 MR. BUCKLEY: Good afternoon,  
6 Commissioners, Mr. Chairman. My name is Brian  
7 Buckley. I'm a staff attorney with the New  
8 Hampshire Office of the Consumer Advocate, here  
9 representing the interests of residential  
10 ratepayers. I may be in competition with Mr.  
11 Taylor here for who can deliver the most  
12 concise comments. So, keep that in mind.

13 The OCA supports the 1300 Rule  
14 revisions as proposed by Commission Staff as  
15 just, reasonable, and in the public interest.  
16 And appreciates their pragmatic approach to the  
17 issues, particularly in light of the timeline  
18 according to which this rule update has had to  
19 occur.

20 Thank you.

21 CHAIRMAN HONIGBERG: That was quick.

22 MR. BUCKLEY: Thank you.

23 CMSR. BAILEY: Is there any --

24 CHAIRMAN HONIGBERG: Use the one that

1 works.

2 CMSR. BAILEY: Is there anybody here  
3 from the wireless industry?

4 *[Indication given.]*

5 CMSR. BAILEY: Can you answer some  
6 questions for me?

7 MS. BOUCHER: I can try.

8 CHAIRMAN HONIGBERG: Why don't we let  
9 Mr. Buckley return to his seat.

10 MS. BOUCHER: Good afternoon,  
11 Commissioners. I'm Kate Boucher, for the  
12 Wireless Association. In full disclosure, I'm  
13 an attorney, not an engineer. So, I will do my  
14 best.

15 CMSR. BAILEY: Thank you. Do you  
16 know anything about small cell wireless  
17 deployment?

18 MS. BOUCHER: I know a little bit. I  
19 know it's a fairly significant issue in other  
20 states for our members.

21 CMSR. BAILEY: And generally, the  
22 antenna are installed on tops of utility poles?

23 MS. BOUCHER: I believe that's the  
24 way the current technology is going.

1 CMSR. BAILEY: Uh-huh. And is it --  
2 is it your understanding that the pole-top  
3 space can't be shared by multiple wireless  
4 carriers?

5 MS. BOUCHER: I believe, given the  
6 diameter of the poles, if there is one pole-top  
7 attachment that, with current technology, there  
8 can only be one pole-top attachment.

9 CMSR. BAILEY: And in order to deploy  
10 the technology, the spacing needs to be pretty  
11 much about every pole?

12 MS. BOUCHER: That's my  
13 understanding.

14 CMSR. BAILEY: So, there's really  
15 only one -- there's only one wireless carrier  
16 that could attach and deploy a small cell  
17 deployment on a particular line of poles?

18 MS. BOUCHER: That's correct, unless  
19 there is a technology innovation that changes  
20 that.

21 CMSR. BAILEY: Okay. And are you  
22 aware of any locations where wireless carriers  
23 are just putting poles in the road?

24 MS. BOUCHER: I am not.

1 CMSR. BAILEY: Do you think that's  
2 possible?

3 MS. BOUCHER: Perhaps one day, if a  
4 particular company makes the business decision,  
5 but that is not where they're heading at this  
6 time, though.

7 CMSR. BAILEY: Where do you think  
8 they're heading?

9 MS. BOUCHER: I'm happy to file  
10 supplementary written comments to share some of  
11 that.

12 CMSR. BAILEY: I'm just interested to  
13 know how the wireless industry, I mean, you  
14 represent the industry, so not just one  
15 carrier, if there's only space on the poles for  
16 one carrier, what the other three carriers are  
17 going to do?

18 MS. BOUCHER: I believe in other  
19 states, particularly in Connecticut, each  
20 carrier is coming up with a deployment plan for  
21 where they can fill in gaps in their own  
22 individual networks.

23 CMSR. BAILEY: Okay. All right.  
24 Thank you.

1                   CHAIRMAN HONIGBERG: Thank you, Ms.  
2                   Boucher.

3                   MS. BOUCHER: Thank you.

4                   CHAIRMAN HONIGBERG: All right. That  
5                   is everyone who signed up and said they wish to  
6                   speak.

7                   Has anyone changed their mind, having  
8                   put down an "N", want to change that to a "Y"  
9                   and offer comments?

10                                   *[No indication given.]*

11                   CHAIRMAN HONIGBERG: All right.  
12                   Well, seeing none, under the Notice, and as  
13                   Mr. Wiesner said at the beginning, we're  
14                   accepting written comments until February 2nd,  
15                   and there are instructions on how to submit  
16                   those in the Notice.

17                   If there's nothing else, we will  
18                   thank you all for your comments, and adjourn.

19                                   ***(Whereupon the hearing was***  
20                                   ***adjourned at 2:25 p.m.)***

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