

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

New Hampshire Rules for Utility Pole Attachments (NH Code of Adm. Rules – PUC 1300))	
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)	DRM 07-119 (Interim Rules)
)	DRM 08-004 (Regular Rules)
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COMMENTS OF OXFORD NETWORKS

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I. Oxford Networks' Background and Interests in This Rulemaking

Oxford County Telephone Company, d/b/a Oxford Networks (“Oxford” or “Oxford Networks”) is a facilities based competitive local exchange carrier that is in the process of building its own network to provide competitive telecommunications, broadband and video services to customers in northern New England. Oxford strives to use its own switching, routing (inside plant) and also constructs its own Fiber-To-The Premises (FTTP) networks (outside plant). In order to provide these services, Oxford places its cables on utility poles owned by other entities, primarily Verizon owned poles. In order to acquire this space, Oxford, as a “pole attacher,” enters into lease agreements with the owners of these utility poles.

Oxford has developed an important track record regarding pole attachment procedures, gained through active construction of outside plant FTTP networks through pole attachment agreements with Verizon in Maine since 2001, and through its efforts to force Verizon to modify its pole attachment procedures to allow access to the telecommunications space upon reasonable terms and in a nondiscriminatory manner. As a result of the policies put in place by the Maine PUC after Oxford’s 2005 Complaint and Request for Investigation, Oxford has been successful and efficient in its expansion in Maine.¹

New Hampshire’s infrastructure and population density is similar to the markets Oxford has already experienced success in. Oxford believes that, under the right circumstances, it could effectively expand into the New Hampshire market and thereby offer New Hampshire consumers competitive telecommunications packages to rival existing providers packages.

In working with the Maine PUC, Oxford sought to solidify an unpredictable situation and create a reliable, equitable framework by which pole owners and pole attachers could work to

¹ If the New Hampshire PUC believes it would be illuminative, Oxford is willing to meet with staff regarding its recent FTTP expansion, so that the NH staff can see a successful expansion with the new policies implemented by the Maine PUC.

share the telecommunications space on existing poles. With such a framework established, both pole attachers and pole owners would be assured of reasonable utility pole agreements that would foster the expansion of competitive telecommunications packages to Maine residents. New Hampshire should incorporate the policies developed by Maine into its Rules for Utility Pole Attachments.

II. New Hampshire's Pole Attachment Proceedings – DM 05-172

On October 24, 2005, the New Hampshire PUC opened a generic investigation into issues related to, among other things, the use by poles owned and controlled by utilities for multiple attachments, including issues related to access to poles by competitive providers. This investigation was based on a Commission Staff memorandum, dated October 20, 2005, that outlined the scope and nature of certain complaints received from customers and utilities related to the installation, maintenance and shared use of utility poles. In that Commission Staff memo, Staff identified complaints that competitors experienced with seeking attachments to Verizon's poles. The Staff recommended that the Commission review Verizon's pole attachment practices and consider how the competitive market is impacted by Verizon's practices.

The Commission's Generic Investigation established a comprehensive "list of topics" for investigation, including Topic No. 5 – Competitive Issues. In a Notice dated February 3, 2006 (Order No. 24,587) the Commission outlined these "competitive issues" as follows:

- a. Who sets poles in VZ maintenance area where VZ doesn't have a customer;
- b. Order of Attachments in Communications Space;
- c. Make Ready for New Attachments; and
- d. Whether and How Pole Attachment Practices Affect Competitive Market.

The Commission established an opportunity for data questions and technical sessions to proceed, with the expectation that Staff would issue a "white paper" summarizing the findings.

At the time the parties were in discovery on these competitive issues, the Maine PUC (at Oxford's request) embarked on a similar investigation into the policies and practices of Verizon, and the impact on the competitive market, in Maine Docket No. 2005-486². In that proceeding, the Maine PUC addressed similar issues identified by the New Hampshire Commission in its generic investigation – Topic 5. In particular, the Maine PUC established new pole attachment standards, over Verizon's objections, for the following: 1) placement of competitor facilities; 2) use of boxing techniques, 3) use of extension arms; 4) time frames for make ready work. See Order in Docket 2005-486.

In Staff data requests issued to Verizon and other utilities in DM-05-172 (dated October 30, 2006) Staff asked Verizon if Verizon planned to modify its pole attachment proceedings in New Hampshire as a result of the rulings made in Maine PUC Docket No. 2005-486. In response, Verizon NH indicated that it had no plans to modify pole attachment procedures (At that time Verizon had a Request for Reconsideration pending in Maine). However, Verizon's Request for Reconsideration was (with one exception) denied by the Maine PUC on February 28, 2007. Verizon has not filed a supplemental response to update its position, so the record is not clear whether Verizon and/or FairPoint intend to abide by the Maine standards when reviewing pole attachment applications in New Hampshire.

In the meantime, the Verizon/FairPoint transaction has shifted the attention of both the Commissions and other utilities. And, in the context of the Verizon/Fairpoint proceeding in Maine in Docket No. 2007-67, FairPoint confirmed that it intends to abide by the rulings of the Maine PUC, with regard to pole attachment processes established by the Maine PUC in Docket

² Oxford Networks f/k/a Oxford County Telephone, Request for Commission Investigation into Verizon's Practices and Acts Regarding Access to Utility Poles, Docket No. 2005-486 (order dated October 26, 2006).

No. 2005-486. FairPoint also asserts that it seeks to unify its practices, wherever possible, in the three state northern New England market.

In any event, Oxford believes that as the Commission has moved towards a rule-making for pole attachment procedures, it should adopt the Maine PUC's standards as specific just, reasonable and nondiscriminatory access to poles standards, for use by telecommunications companies, such as Oxford.

III. Maine's Framework In Light Of The Oxford-Verizon Proceedings

The Maine PUC agreed with Oxford that Verizon's practices were stifling competition in the Maine market. As a result, Maine now has a solid framework to regulate what the Maine PUC termed Verizon's essential "monopoly" on providing pole access to its direct competitors. See Docket No. 2005-486 Order at 10. The Maine PUC ordered Verizon to immediately conform its practices to the following points, which Oxford now urges the New Hampshire Commission to adopt and incorporate into its Pole Attachment Rules.

1. Efficiency-Driven Analysis of Lowest Pole Position

In Maine (and presumably in New Hampshire) Verizon placed an absolute prohibition on any third party placing a cable below Verizon's own cable. The Maine PUC found this prohibition to be unreasonable and ordered owners to allow attachers access to space below owners' cables when it was more efficient or where space is not available above those facilities along the route or most of the route of the attachments. Order at 12.

A simple, logical rule of thumb was expounded in this portion of the Decision (at pp 12-14): if attaching one party's cables below another party's cable would require less rearrangement of existing cables, then the party should generally be allowed to do so. Conversely, if attaching

one party's cable above another creates less rearrangement and cost than attaching below, then that should be done.

In effect, Maine has prohibited pole owners from arbitrarily declaring that their cables will always be in the lowest position and instead takes a common sense/economic approach to determining the lowest pole position.

Suggested language: Pole owners shall allow attachers to attach facilities below those of the pole owners if space is not available above those facilities along the route or most of the route of the attachments.

2. Reasonable Use of Boxing of Poles

In Maine (and presumably in New Hampshire) Verizon placed an absolute prohibition on allowing a competitor to "box" poles where necessary. "Boxing" refers to placing cables on both the road side and the field side of the pole. Order at 4, ft.n.8 and at 14-16. However, the Maine PUC found this practice an unreasonable and discriminatory practice. Order at pp 14-16; Order on Reconsideration at pg 4. The Maine PUC ruled that the boxing of poles is, and continues to be, a common, accepted industry practice which creates additional space on poles.

As such, pole owners were directed to allow attachers to box poles which "can be safely accessed by bucket trucks, ladders or emergency equipment," thus alleviating owners' safety concerns while allowing attachers to box poles in the same manner pole owners have done in the past.

Suggested Language: Pole owners shall allow attachers to box poles consistent with the requirements of applicable codes and which can be safely accessed by bucket trucks, ladders or emergency equipment.

3. Reasonable Use of Extension Arms

In Maine (and presumably in New Hampshire) Verizon placed a similar ban on the use of extension arms on utility poles. The Maine PUC again found this absolute prohibition against the use of extension arms by third-party attachers to create more space on the pole or avoid make ready work to be unreasonable. Order at 17. Accordingly, the Maine PUC directed pole owners to allow attachers to use extension arms consistent with industry standards. .

Suggested Language: Pole owners shall allow attachers to utilize extension arms in accordance with accepted industry standards.

4. 90 Day Maximum Make-Ready Timeframes

In Maine (and presumably in New Hampshire) Verizon allowed itself a maximum of 180 for completion of make-ready work. The Maine PUC found this timeframe unreasonably long considering much shorter time frames instituted in other states, such as New York and Vermont. Order at 18. Upon its reconsideration, the Maine PUC set a 90 day maximum as a reasonable maximum timeframe for completion of all make-ready work by all attachers holding that this middle ground did not impose any undue burden upon owners or attachers. Order on Reconsideration at 3.

Suggested Language: Pole owners shall complete all necessary make-ready work no more than 90 days after receipt of the work order.

IV. Proposed Access Standard – PUC 1303.01

The general access standard proposed by the New Hampshire Commission in proposed PART Puc 1303.01 is a good opening provision, establishing that access to poles must be “on terms that are just, reasonable and nondiscriminatory” and must be done with regard to “safety, reliability and generally applicable engineering purposes.”

Oxford urges the Commission to provide for additional rules in the suggested language above, to govern access to poles by competitive telecommunications companies. Specifically, the Commission should incorporate the specific rulings of the Maine PUC in Docket No. 2005-486 and the suggested language above to establish the basic framework to encourage competition while protecting the interests of pole owners. There are several reasons supporting the addition of these additional standards.

First, it would place New Hampshire at the forefront of telecommunication pole utility regulation. It is evident from the Technical Session conducted on February 27, 2007 that the Commission seeks to be a creative leader, rather than a follower, in this regulatory area and setting down specific rules for the behavior and interaction of pole owners and attachers would indeed push New Hampshire to the front of the field.

Second, it would obviously ensure a more level playing field for telecommunications participants in New Hampshire. The ruling of the Maine court was not intended to give attachers an advantage over owners, but rather to create a reasonable, equitable solution to a number of key issues between two groups which are inherently opposed, but also inherently unequal in their respective bargaining position. The Maine court may have adopted Oxford's position on a number of issues, but it did so by finding Oxford's position to be reasonable, moderate, and capable of serving *all* interested parties effectively while also meeting the policies of encouraging competitive facilities to be deployed in the state.

Third, establishing specific standards where Verizon has resisted such standards encourages third parties to enter the New Hampshire market, fostering competition. Oxford is considering an expansion into the New Hampshire market but only if a framework for reasonable lease agreements is established. Of course, in order to foster competition New Hampshire needs

to provide prospective market participants with a sufficient framework for access to utility poles that are controlled by competitors and represent monopoly bottleneck facilities. Oxford is concerned that a rule that stops with just a broad, general statement inherently creates room for interpretation by the utility owner that will impede access by competitors. Indeed, Verizon's data responses in DM 05-172 – refusing to apply the rulings of the hearing examiner in recommendations ultimately adopted in Maine PUC Docket 2005-486 – provides little comfort to Oxford that Verizon or FairPoint will abide by this ruling in New Hampshire absent an affirmative statement by this Commission in the form of these rules. Simply put, New Hampshire can eliminate this source of ambiguity by adopting the Maine PUC's findings in its pole attachment rules as suggested above.

Fourth, by adopting the Maine standards as its own, New Hampshire tribunals would greatly reduce the number of novel questions before it. It was generally agreed upon during the Technical Session that tribunals took the longest time in resolving disputes when faced with cases of first impression. Specific statutory provisions derived from the Maine decision would eliminate a number of these time consuming, yet important, first impressions by providing clear, unambiguous standards.

Finally, adopting these specific standards in the rules will reduce overall resource strain on the Commission to engage in a similar and costly complaint proceeding and investigation as in the Maine PUC's Docket No. 2005-486. Parties would be forced to contract agreements which conformed to specific rules rather than being free to construct agreements which immediately become burdensome complaints and investigations in order to obtain the benefits of the Maine PUC orders and policies established in Docket No. 2005-486.

V. Conclusion

For the foregoing reasons, New Hampshire should use Maine's Docket Number 2005-486 Decision to further solidify and supplement the rules for PUC 1300. Such a step would benefit pole attachers and pole owners as these groups could more effectively reach just, reasonable and nondiscriminatory agreements that do not require Commission interpretation and intervention. The greatest benefit of adopting Maine's standards will be felt by the citizens of New Hampshire, as they enjoy the consumer benefits that will be seen by greater competition for pole attachment in these rules.

Respectfully Submitted,

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