STATE OF NEW HAMPSHIRE

BEFORE

THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DRM 08-004

RULEMAKING, PUC 1300 POLE ATTACHMENTS, REGULAR RULES

COMMENTS OF segTEL, INC.

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I. INTRODUCTION

segTEL supports the implementation of rules governing access to poles , ducts, conduits and rights of way and urges the Commission to develop rules for the CLEC and CATV industries to access these facilities in a manner that is competitively neutral, nondiscriminatory, safe, and efficient, with just and reasonable rates, terms and conditions. segTEL appreciates the opportunity to comment on the various issues that must be considered as permanent rules are adopted.

II. BODY OF LAW

Before the adoption of interim rules in 2007, access to poles, conduits and rights of way was regulated by the Federal Communications Commission (FCC) under 27 USC 224. The rules the Commission adopts should rely on the body of the federal law available and review how it can inform the rulemaking process in relation to RSA 374:34-A.

RSA 374:34-A specifically contemplates that the Commission shall adopt rules that are consistent with the requirements for rights of access and types of attachments regulated pursuant to 47 USC 224. Specifically, 47 USC 224 provides statutory rights of access to poles, conduits, and rights of way exclusively to the CLEC and CATV industry. No rights of access are statutorily granted by Section 224 for any party that is not a competitive local exchange carrier or community access television company. RSA 374:34-A envisions regulation "with regard to the types of attachments regulated under 47 USC section 224." As such, the rights and privileges contemplated in this rulemaking should apply exclusively to the rights of CLEC and CATV parties to access *incumbent* facilities such as utility poles, conduits, and rights of way.

segTEL furthermore believes that there is broad pre-emptive power of the Telecommunications Act that conditions the Commission's activities regarding the development of rules that can be promulgated in response to the NH Legislature's grant of authority . The Commission may not create rules that conflict with or otherwise interfere with the pro-competitive goals of the Act. RSA 374:34-A provides state-level authority to regulate pole attachments but that authority must be utilized in a manner that does not conflict or interfere with the Congressional mandate of the Act. Therefore, to comply with 47 USC 253 the Commission should not make rules that could

be construed as prohibiting or having the effect of prohibiting the provision of interstate or intrastate telecommunications services by CLECs.

Additionally, to the extent that broad preemption does not exist, segTEL encourages the Commission to closely follow the past decade of federal enforcement of the Act with regards to pole attachments. The FCC, as the prior enforcement agent on these issues, developed a voluminous record of rulings and enforcement proceedings and crafted decisions that should be instructive and persuasive in the creation and enforcement of local rules for pole attachment regulation. Many of the cases that were decided by the FCC under 47 USC 224, were appealed, and thus there exists a substantial history of judicial determinations including those by the US Supreme Court on the issue of pole attachments. segTEL believes that the Commission should grant a substantial amount of deference to this history both to understand the nature and body of enforcement actions, and to avoid time-consuming litigation of issues that have been conclusively decided on the federal level.

To the extent that the local geography of New England presents special or unique challenges to the issue of pole attachments, segTEL believes that the Commission should recognize that neighboring states have regulated pole attachments for years. To the extent that lessons learned and determinations made in Maine, Vermont, Massachusetts, New York and Connecticut can provide guidance to best practices for pole attachments in New Hampshire segTEL proposes that these states' policies and rulings be investigated in the rulemaking process.

III. UTILITIES AFFECTED

The incumbent utilities affected, at a minimum, include those specifically defined by 47 USC 224. Therefore, the rules must apply to all utilities with facilities that transverse rights of way or other designated space by virtue of the utility's status as an incumbent. Telephone, Electric, Gas, Steam and Water utilities each have the ability to deploy facilities and claim rights-of-way, and to the extent that a competitive utility would use that same right-of-way in the provision of service, that right of way should be made available to competitors for attachment.

IV. ATTACHERS AFFECTED

Consistent with the Telecommunications Act, telephone and cable TV companies must be provided access to utility poles, conduits, and rights of way. Other attachers are not protected by nor granted status under federal law. As such, entities that are neither CATV nor CLECs have no statutory rights of access to these facilities. The rules must provide for the access concerns of attachers accorded status under the Act.

In addition to complying with Federal Law and the plain language of RSA 374:34-A this is also a proper interpretation because the Commissions's administrative and enforcement capabilities extend only to those utilities fall within the PUC's regulatory ambit. Rules that grant rights of access to non-utilities (for example, a bank that might wish to connect two branch locations across a street) may create an unsustainable regulatory environment where the Commission will become a venue for complaints against *non* utilities that are normally best suited for the court system.

The Commission's authority under RSA 374:3 only extends to public utilities and their plants and does not expand the Commission's authority to give it a right to regulate entities that are not public utilities. Granting rights of access to parties with no federal right to attach severely prejudices both incumbents and prospective legitimate competitive attachers; the former by taking their private property and the latter by impeding competitive attachment by allowing poles to become congested by private parties.

Finally, to the extent that third party attachment by non-status parties is contemplated or permitted the Commission must recognize that rights including but not limited to "just and reasonable rates," "nondiscriminatory access," and "modifications to allow access" are specific rights that Congress has accorded only to CATV and CLECs. Third parties may *at best* be granted rights that are equal to but *no better* than the CATV and CLEC industry. However, there is broad agreement among both the incumbent utilities and the competitive providers that there is no basis in law for granting special rights to non CLEC/CATV entities.

V. DEFINITION

Consistent with federal statutes and FCC rules, attachments is a term that encompasses all competitive access to facilities of the incumbent utility. "Pole Attachments" also include attachments to ducts, conduits and rights of way. The rules should pertain to all utility facilities, including poles, conduits, rights of way, handholes, manholes, splice points, pedestals, and all similar structures, equipment, appurtenances on or about the network owned or controlled by a utility. Rather than engaging in a tedious process of naming every type of utility facility to which access must be provided the Commission rules should start with the rebuttable presumption that any utility facility meeting the requirements of section 224 must be open to access.

Access must also include the documentation of those facilities, including, but not limited to, maps, records, plats, plans and other such documentation of the utility's network that would reasonably allow a competitive attacher to investigate and determine reasonable routes for its facilities. There is a colorable argument that many of these plans are non-public information and segTEL agrees that certain restrictions, such as viewing only at the incumbent's New Hampshire offices, or redaction of customer names, may be necessary to protect the interests of incumbent utilities and their customers.

VI. CONTRACTS

In the interim rules, voluntary contracts between attachers and utilities are presumed to be equitable. This is a well-established facet of contract law, but one that is inappropriate in the case of attachment contracts. Historically, the FCC has taken the view that attachment contracts cannot be presumed to be either voluntary or reasonable.

The Supreme Court of the United States has recognized that utility poles are bottleneck facilities, which is the reason Congress decided to impose regulation. National Cable & Telecommunications Ass'n v. Gulf Power Co., 534 U.S. 327, 341 (2002). The incumbent and competitor are not on equal terms at any time in contract negotiations. The competitor who refuses to sign an unjust and unreasonable contract, or who must submit to exhaustive negotiations which consume resources in unequal proportion for competitor and incumbent, must

abandon the prospect of getting into business, because **there is no alternative to use of existing poles**. By comparison, the worst that can happen to a pole owner whose contract is revised after signing because of a regulator's review is that (a) the pole owner enjoys the negotiated rate, term or condition until it is overturned; and (b) the rate, term or condition is later modified to be just and reasonable. The pole owner forfeits nothing, and has an equal opportunity to demonstrate that the rate, term or condition is just and reasonable. While detractors have labeled the FCC's policies with the pejorative "sign and sue" label, the policies exist because inequality exists. segTEL and other competitive attachers have operated under this Federal regime for many years and believes that any commission rules must, at the very least, address the status of the agreements signed under the FCC rules and policies that predate the enactment of RSA 374:34-A.

A. Current Contracts

Current contracts held by competitors with incumbent utilities have been adopted under the Federal Regulatory regime and may have been undertaken on an unequal playing field. The rules should either explicitly continue the Federal regime for the adoption and interpretation of current contracts or provide a "fresh look" and allow for the existing contracts to be arbitrated by the Commission upon the request of a competitive attacher.

B. Negotiations and Arbitration

Speed to market is a primary consideration for new competitors. This is where the CLEC industry often has a substantially different interest than the CATV industry, as the latter has by and large had its attachments in place for many decades at this point. A competitive attacher that has to make a choice between signing an unconscionable contract or never entering a market is severely prejudiced. To the extent that the Commission seeks to implement a regulatory regime that takes a divergent approach to the FCC's approach its rules must provide for specific intervals for the completion of contract negotiations, including intervals for the response to a request for a contract, negotiation timetables, and deadlines after which arbitration can be sought. Arbitration must have time limits as well. segTEL notes that while the New Hampshire Commission has viewed other agreements under the act as presumptively just and reasonable (i.e..

UNE Interconnection agreements derived under 47 USC 252), these agreements have mandatory arbitration that competitors may invoke and the arbitration has strict time limits imposed.

C. Terms

The Commission's rules should follow the example of the FCC Enforcement Division and determine that certain contract terms should be disallowed in attachment contracts, such as those requiring advance payments, bonding, insurance obligations, and other anti-competitive practices that effectively impede access. To impede prompt and efficient access to facilities the incumbent utilities have historically demanded these requirements from competitive attachers even though they are simply entitled to reimbursement for actual costs of providing facility access. Some utilities may justify such terms by expressing concern that the applicant lacks a sufficient credit history. However, the appropriate requirement for a credit concern is collection of a security deposit with interest payable when the deposit is returned rather than advance payments, bonding, or insurance obligations. When a credit concern does not exist, no security deposit should be required and pole owners should not be allowed to require advance payments, bonding, or insurance obligations, which have no relation to actual costs. Without endorsing any specific policy segTEL notes that the Commission has considered concerns of this nature in the past and if it believes that there is a major issue here the Commission has the ability to provide a centralized vehicle to ensure that the legitimate payment entitlements of incumbents are secured.

Finally, the FCC has historically determined that obligations contained in pole attachment agreements must be made mutual where it is logical and reasonable to do so. To that extent, both parties must be bound to insure and indemnify the other for their own actions and both parties must be obligated to operate their utility plants in a manner that is safe and compliant with appropriate regulation, law and good industry practice.

VII. LICENSES

A. Applications

From information filed in the DM 05-172 (the "poles docket") Staff is already aware that there is already some standardization in the application process. The rules should provide for a standard, neutral and nondiscriminatory application process for all prospective attachers granted rights by 47 USC 224. The rules should establish which utility will accept initial applications and set a timeframe for the application to be distributed to the other joint owners. Prospective attachers that make a proper application pursuant to the process established by the rules should have the minimum survey and make-ready timeframes applied to its application.

B. License Rights and Obligations

The rules must establish the rights and obligations of an attachment license, what a license actually conveys, and realistic sanctions for the violation of an attachment license. Violations of license rights or entitlements need to be investigated by the Commission. Violations could come from any party. For example, a competitor could violate the incumbent's rights by failing to follow a reasonable pole attachment process or by making attachments in an unsafe or unworkmanlike manner. An incumbent could violate a competitor's rights by allowing another attacher or third party to infringe upon, or attach within, space that is licensed to the competitor. Finally, a conflict could arise between two licensed competitive parties that is not successfully resolved by the utility owner and require Commission attention.

Currently, utility contracts and state law provides for the immediate removal of illegal attachments. In practice, this has been difficult to achieve, even in the presence of egregious violations. The rules should seek to provide enforceable penalties for failure to honor a valid license.

VIII. ACCESS TO RECORDS

The survey process includes the examination of utility records and field surveys to determine whether structures are available in the areas requested by the competitive attacher and to estimate costs. To promote competition and decrease the time and cost for make-ready work, the rules should allow competitive attachers to review such records.

IX. ENGINEERING SURVEYS

In order to expedite surveys, the rules should allow attachers to use independent contractors that would be approved by an individual utility or by an accreditation program. Allowing third-party contractors will ensure that surveys are done in a timely manner, that the utility does not include standard or deferred maintenance in its make-ready work or otherwise inflate make-ready costs.

In some cases, utilities may also use attachment surveys to consider deferred maintenance, facility inventory, long-term planning, or any other purpose besides the attachment's direct impact. To the extent they do so, the utility should bear the cost for the survey to the extent that it seeks to investigate issues unrelated to a prospective attachment. Utilities should not be allowed to delay competitive attachment on the basis of unrelated discretionary or remedial work.

X. MAKE READY

A. Time Intervals

"Make ready" is the industry term used to describe the process of altering existing facilities to accommodate a new attachment to a pole (or conduit, etc). There are several reasons why make-ready would be necessary. It is important to understand that the make ready is about safety. In some cases when a competitive attacher seeks to make a new attachment the preliminary survey shows that the facility is out of code, severely degraded, or otherwise unusable and must be replaced. As there are tens of thousands of incumbent utility facilities throughout the State a utility does not always know that its plant must be replaced until they have a reason to look at it.

In this case, while some make-ready may be necessary to accommodate the prospective attachment, make ready work to make the facility safe and compliant would be required *regardless* of the prospective attachment. Utilities must complete make ready of this sort in an appropriate time frame but the rules must specify that work necessary to make a facility safe and code-compliant that is not a direct result of the prospective attachment must be performed at the incumbent utility's sole cost.

The second reason for make-ready is when a pole facility is safe and compliant but the prospective attachment would create a non-compliant situation because the existing attachers have made their attachments either in an inefficient manner or at inappropriate locations. In this case the make-ready must be performed in a prompt and efficient manner to accommodate a prospective attacher but the Commission must consider to what extent, if any, the prospective attacher must pay to remedy the prior actions of others.

The third reason for make ready is when a pole facility is safe and compliant and all attachments are proper but the prospective attachment would create a noncompliant situation absent the necessary alteration work. In this case the prospective attacher is the cost causer and the incumbent utilities are making modifications exclusively for the purpose of accommodating the new attachment. This form of make-ready must also be done on an expeditious basis but the prospective attacher would be responsible for the payment of actual and reasonable costs of the incumbent's modifications that are made.

Finally, to the extent that the Commission has recognized situations such as "double poles" segTEL believes from its substantial experience in competitive deployment that this situation is not the result of a single party's bad actions. The make-ready process is one that depends upon communication, cooperation and responsiveness between all attachers. The Commission's rules should emphasize that not only should make-ready be efficiently performed, but notifications for make-ready (including, for instance, pole transfers) be efficiently communicated. A complaint and penalty process should exist for attachers failing to timely respond to make ready requests.

segTEL supports the premise that poles must be safe for new attachers, existing attachers, and for repair crews and the general public. However, the time lost when a utility fails to schedule and perform make-ready work results in serious delay to market that rises to the level of a competitive barrier.

Minimum intervals for the completion of all make-ready work, including completion of engineering surveys, determination of make-ready costs, completion of actual work, notifications to other entities on the poles, and documentation should be adopted.

Utilities must not be permitted to install their own facilities on a different timeline than that for the completion of make ready work. To allow otherwise gives utilities an unfair advantage over competitive attachers. By setting minimum intervals for the completion of make-ready work, the Commission will significantly level the playing field.

Maine, for instance, has established minimum make-ready timeframes because of the impact delays have on the introduction of competitive services. The ME PUC adopted a 90-day timeframe for completion of all make-ready work when pole replacement was not necessary and a 180-day make-ready timeframe when a pole needs to be replaced.

Adoption of enforcement mechanisms are also necessary to ensure that make-ready timeframes are followed. Since the Commission's imposition of penalties and fines for violations of the make-ready timeframes may not be allowed under New Hampshire law, the rules should allow competitive attachers to seek direct damages against a utility that violates make-ready timeframes.

B. Composition of Make Ready Costs

Make-ready costs should not be assessed to a prospective attacher for deferred maintenance, correction of safety violations, or replacing facilities that would be otherwise necessary or required with the adoption of the NESC. A new competitive attacher should only be charged for the impact caused by the competitive attacher's attachment on the pole and not to correct safety issues. For instance, a competitive attacher should not be charged if a pole is too fragile for its current load or if the electric incumbent's facilities have sagged over time and need to be moved back to the proper place.

Competitive attachers should not be required to pay make-ready costs when an ILEC chooses to relocate lower on its poles. Correcting improper and wasteful use of pole space is unnecessary and unreasonable make-ready work that should not be borne by a new attacher, but should be paid for by the party opting or needing to relocate.

New competitive attachers also should not be required to pay the make-ready costs to correct improper attachments by another attacher such as a cable company, CLEC, or

municipality. If an existing competitive attacher must correct an improper attachment prior to the new attacher gaining access, the existing competitive attacher should pay the associated costs.

XI. BEST PRACTICES

A. Boxing and Extension Arms

Boxing of poles and use of extension arms should be permitted by the rules when they do not endanger the safety of utility workers or the general public and they would render unnecessary a pole replacement or rearrangement of other carriers' facilities and when the facilities are accessible by ladder, bucket truck, or emergency equipment. Both practices are accepted in the industry and neither is prohibited or restricted by the National Electric Safety Code (NESC). Indeed, utility pole owners often use boxing and extension arms rather than replacing a pole to save time and reduce costs. Although safety concerns have been expressed by pole owners as a reason to prohibit boxing and extension arms, this concern can be alleviated by the Commission conditioning the use of boxing and extension arms when facilities are accessible by ladder, bucket truck, or emergency equipment. Such a condition will allow competitive attachers the ability to save time and expense of make-ready – the same as pole owners – while providing appropriate safety measures.

B. Overlashing

Consistent with FCC findings, and the NESC, the rules should allow licensed attachers with rights under 47 USC 224 to engage in overlashing, and provide that overlashed facilities incur no additional charges.

C. Pole Position

Competitive attachers frequently find that ILECs claim the lowest position on a pole but then place facilities substantially higher than the minimum clearance. Moreover, ILECs often only lower their attachments enough to accommodate a new entrant and then must lower the facilities further when a subsequent attacher makes a request. The rules should

require an ILEC to place its facilities at the pole's minimum clearance level and move existing facilities at the ILEC's expense to make room for new attachers. This issue was recently investigated in Maine where the ME PUC ruled that new attachers are allowed to cross over an ILECs facilities, unless the ILEC to pay to relocate its facilities when it claims the lowest pole position.

XII. SAFETY

The rules should continue to require adherence to the NESC, and, to the extent applicable, the National Electric Code, as the standard for safe installation. Requiring compliance with the NESC is critical to ensure that all activity on poles is done safely. NESC also provides a defined standard that can be used to determine the legitimacy of make-ready proposals.

The NESC is a complete standard for attachments. Utilities should not be allowed to impose additional standards for any topic already addressed in the NESC, such as Verizon's requirement that the Telecordia Blue Book (which is not generally available to attachers) be used to determine compliance.

XIII. CONDUIT

The rules should allow access to building-entry conduit. Further, the rules should set a standard for determining reasonable spare conduit reservations by a utility. segTEL believes reservation of spares should must be limited to the amount needed for reasonable maintenance purposes.

XIV. COMPLAINTS

The rules should allow for fast-track arbitration of disputes, as well as a defined process for complaints. Complaints should be considered against any utility if any policy, decision, term, condition or rate does not rise to the standards of competitively neutral, just and reasonable.

XV. MUNICIPALITIES AND OTHER NON-UTILITY ATTACHERS

There is substantial agreement between incumbent utilities and competitive attachers that the rights of attachment accorded to CATV and CLECs in 47 USC 224 are statutory grants intended to achieve a congressionally mandated result. When drafting the Telecommunications Act of 1996 Congress had the option of empowering other parties with entitlements but chose not to do so. Furthermore, RSA 374:34-A does not provide for this Commission to assign new rights to parties not specifically contemplated in 47 USC 224. The New Hampshire General Court also had the option attempting to tackle the issue of granting rights to third parties but elected not to do so in its enacted legislation. segTEL stands with the incumbent utilities in urging the Commission not to read new rights into the legislation for parties that are neither named in the state or federal authorizing statutes nor subject to the jurisdiction of this Commission.

The Commission has an obligation to ensure not only that incumbent utilities provide competitively neutral and nondiscriminatory access at cost-compensatory rates to CLECs and CATV, but that the incumbent utilities do not have their facilities seized from them by non-entitled and unauthorized third parties.

Additionally, to the extent that unregulated third parties are allowed to negotiate access to utility property such agreements must be supervised to ensure that they do not provide terms or conditions that are superior in any respect to those offered to parties entitled to access under 47 USC 224. For example, a facility owner may not demand compensation for utility pole access from a CLEC while simultaneously allowing a municipal broadband network that involves structurally identical appurtenances to attach free of charge. Any other policy will have the effect of forcing both competitive parties and incumbents to unlawfully subsidize private party and municipal activities, and greatly increases the possibility for hazardous and improper attachments by unregulated private entities.

The FCC has recognized that certain municipal attachments for one-way fire alarm and emergency signaling have predated the enactment of the 1996 Act. By way of example, many municipalities in New Hampshire have legacy attachments to utility poles for fire alarms, traffic signals, or street lighting purposes. Such rights date back to the days before residential telephones were nearly ubiquitous and when the public safety was best served by physical pull-

boxes for emergency signaling. Provided that pole owners enforce safety obligations upon all parties segTEL has no opposition to one-way signaling attachments that pre-date the Act being grandfathered *provided that* this does not provide any future rights of municipalities to parlay their placement by change of use into a free and preferential competitive advantage.

segTEL understands that many municipalities believe that their historic presence on utility poles not only allows their continued presence, but extends to the right to make changes in the type, weight and placement of facilities, as well as expanding the use without limitation or conditions. In response segTEL submits that the actions of the New Hampshire legislature contradict the municipal position. Legislation dating back as early as 1881 exempts utility facilities from adverse possession and prescriptive easement claims. Specifically, RSA 231:174 states as follows: **"No enjoyment by a person, copartnership, or corporation for any length of time of the privilege of having or maintaining wires and their supports and appurtenances in, upon, over, or attached to any building or land of other persons, shall create an easement or raise any presumption of a grant thereof."** The plain language interpretation of 231:174 is that that the presence of signal wires on utility poles does not in any way create an ongoing entitlement to a municipal entity.

segTEL has understood that Verizon's position on municipal attachments is that pre-1996 signal wire attachments are allowed on a voluntary and revocable basis as part of a general commitment to assist in the administration of emergency signaling and public safety. segTEL also understands Verizon's position regarding the change of use of attachments to be that a municipality seeking to do anything other than maintain its one-way signaling plant must then become a competitive attacher and seek to make new attachments to pole facilities the same matter that any other third party would follow, including the retention of the utilities to perform pole survey and make-ready work. To the extent that old signal wires do not interfere with new competitive attachments segTEL generally supports the above policy.

Such policies do not constrain a municipality's ability to own and operate networks for its own use or for public use. A municipality or any other party can readily apply to the Commission for authority to be a utility. There are many regulated municipal water companies, as well as a municipal electric company in New Hampshire. To the extent that a municipality would like to

convey communications for the general public there is a defined path open to them and they should access it rather than circumvent it.

Finally, non-utility status does not exempt non-utility parties from compliance with applicable safety codes and obligations. Municipalities should also be required to comply with applicable safety codes for their signaling attachments because any exception to safety code compliance endangers the safety and lives of utility workers.

XVI. RATES

segTEL proposes that the commission investigate whether competitive utilities and CATV should be subject to a single ratemaking methodology and that the single rate, regardless of service platform, be adopted and applied across the board for CATV and CLEC attachers. As the Federal Communications Commission tentatively concluded, even-handed treatment for broadband Internet access service warrants the adoption of a uniform rate. This rationale for even-handed treatment should likewise apply to other services even though they may be offered on different platforms. It is an outdated concept that providers only offer one kind of service, e.g., cable or telecommunications, and because providers generally offer multiple services over the same platform, a single rate should apply.

segTEL additionally proposes that rates charged for other services performed by utilities such as pole surveys and make ready be limited to the actual and *reasonable* expenses associated with providing such services. Utilities should not be allowed to create a profit center for the performance of mandated services simply because a prospective attacher has no other choice but to pay the rates demanded if they wish to attach.

XVII. TARIFFS, SGATS, and INTERCONNECTION AGREEMENTS

segTEL requests that the Commission investigate whether the rules for pole attachments lend themselves to the requirement that incumbent utilities maintain a filed tariff for pole attachments with the Commission, or in the alternative maintain a Statement of Generally Available Terms (SGAT). Other states such as Vermont have implemented measures of this sort to assist in the regulation of pole attachments. This Commission has broad authority to require and supervise tariffs for Commission-regulated services provided within the State. Furthermore, this

Commission has concluded in prior proceedings that the existence of Tariffs create an efficient method for competitors to enter a market without having to endure the burdensome process of negotiating agreements with powerful incumbent utility interests. Although segTEL has no direct knowledge, it may be that incumbent utilities also believe there to be a substantial benefit in the existence of a filed tariffs with consistent rates, terms and conditions that apply to all attachers.

segTEL requests that the Commission in this rulemaking proceeding determine whether it has the authority to order the creation of pole attachment tariffs, and if such authority exists whether it is in the public interest to do so. segTEL believes that the creation of such tariffs would greatly reduce the likelihood of disputes over time, decrease the learning curve during dispute resolution (by limited the number of individual agreements that exist), and provide for a level playing field for new entrants.

To the extent that the Commission adopts rules that continue to contemplate individual attachment agreements, segTEL recommends that all pole attachment agreements be filed with the Commission. segTEL recommends that an incoming party should be provided the opportunity to simply adopt the terms and conditions of an existing agreement with a similarly situated party (i.e., CATV can adopt a pre-existing CATV agreement with a specific incumbent utility and a CLEC may adopt a pre-existing CLEC agreement with a specific incumbent utility) without the need for negotiation of individual terms and conditions. This process would enhance the efficiency of the process and speed entry to market.

The adoption of a Uniform Attachment Agreement would also provide efficiency and consistency in terms and conditions.

XVIII. CONCLUSION

segTEL appreciates the opportunity to represent competitive attachers in this rulemaking, and looks forward to working with the parties and staff on permanent rules for attachments.