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STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION

ORIGINAL	
N.H.P.U.C. Case No.	DT 12-084
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Time Warner Entertainment Company L.P.
d/b/a Time Warner Cable

Petition for Resolution of Dispute with
Public Service of New Hampshire

DT 12-084

DIRECT TESTIMONY OF JULIE P. LAINE
ON BEHALF OF
TIME WARNER ENTERTAINMENT COMPANY L.P. d/b/a TIME WARNER CABLE

DATE: July 20, 2012

TABLE OF CONTENTS

TESTIMONY OF JULIE P. LAINE

Qualifications..... 1

Summary of Testimony..... 2

Testimony..... 4

 Background..... 4

 Essential Facility..... 11

 PSNH Pole Agreements..... 12

 Rates..... 14

 Non-Recurring Charges..... 24

EXHIBITS

JPL-1: PSNH Pole Data..... 26

JPL-2: Photograph of Typical Pole Arrangement..... 32

JPL-3: Photograph of Standard Cable Pole Attachment..... 34

JPL-4: Illustration of Fiber Optic Cable..... 36

JPL-5: Three-Party Pole Attachment Agreements..... 38

JPL-6: Representative Sample of PSNH Pole Rental Invoices..... 173

JPL-7: PSNH Letter to TWC, Nov. 18, 2011..... 184

JPL-8: TWC Letters to PSNH..... 187

TESTIMONY OF JULIE P. LAINE

1 **Qualifications**

2

3 Q. Please state your name, position and business address.

4

5 A. My name is Julie P. Laine. I am currently Group Vice President and Chief Counsel,
6 Regulatory of Time Warner Cable Inc. (“Time Warner Cable” or “TWC”). My office is
7 located at 60 Columbus Circle, New York, New York, 10023. My telephone number is
8 (212) 364-8482, and my email address is Julie.Laine@twcable.com.

9

10 Q. Please describe your responsibilities.

11

12 A. I am responsible for legal and regulatory matters relating to TWC’s video, voice and data
13 services. Prior to becoming Group Vice President, Regulatory, I was Vice President &
14 Chief Counsel, Telephony for TWC. I have worked for TWC in these roles for ten years.

15

16 Q. Please summarize your background and professional experience.

17

18 A. Prior to assuming my present position, I was Vice President & Chief Counsel, Telephony
19 for Time Warner Cable. I joined Time Warner Cable in 2002 from IP telephony company
20 Net2Phone, Inc., where I was Associate General Counsel. I also previously served as an
21 Attorney Advisor in the Policy Division of the Federal Communications Commission’s
22 Common Carrier Bureau where I worked on issues relating to local telephone competition,
23 broadband deployment and telecommunications mergers. Before that I practiced law in
24 Washington, D.C. My legal career began as a law clerk in the U.S. District Court for the

1 District of New Jersey, and I later served as an Adjunct Professor at the Seton Hall Law
2 School. I received my undergraduate degree from the University of Pennsylvania and my
3 law degree from the College of William & Mary.

4
5 Q. Could you describe your experience with respect to the issues raised in this proceeding and
6 addressed in your testimony?

7
8 A. I have represented TWC with regard to pole attachment regulatory matters in the states in
9 which TWC operates since 2002, including on matters pertaining to the application of the
10 Federal Communications Commission (“FCC”) pole attachment formula generally, as
11 well as to Voice over Internet Protocol (“VoIP”) service. I am familiar with the FCC
12 formulas used to derive annual rental rates for cable attachments, as well as the FCC’s
13 formulas used to calculate rents for telecommunications attachments, including both the
14 currently applicable FCC telecom formula (effective June 1, 2011) (“FCC Telecom
15 Formula”) and the superseded formula (“Historic Telecom Formula”). I have been
16 involved in the dispute about the appropriate pole attachment rate to be charged by the
17 Public Service Company of New Hampshire (“PSNH”) since 2006.

18
19 **Summary of Testimony**

20
21 Q. On whose behalf is this testimony filed?

22
23 A. This testimony is filed on behalf of TWC, a corporation with its principal place of
24 business at 60 Columbus Circle, New York, New York 10023.

1 Q. Have you provided testimony in prior proceedings before the Commission?

2

3 A. Yes, I provided joint testimony and reply testimony in Docket No. DT 09-044, Petition
4 for Investigation into the Regulatory Status of IP Enabled Voice Telecommunications
5 Service.

6

7 Q. Are you familiar with the regulatory framework regarding pole attachments in New
8 Hampshire?

9

10 A. Yes, I am very familiar with this framework. I have reviewed the pertinent New
11 Hampshire statute RSA 374:34-a, and Puc Rules 1304.01 et seq., as well as the federal
12 rules referenced in the Puc Rules, 47 C.F.R. §§ 76.1400 et seq. I am also familiar with
13 the New Hampshire legislature's recently adopted law S.B. 48, 2012 Sess. (N.H. 2012)
14 (passed by Senate, Jan. 18, 2012, and House, May 17, 2012), available at
15 <http://www.gencourt.state.nh.us/legislation/2012/SB0048.pdf>, which amended RSA 362
16 to prohibit direct or indirect regulation of VoIP services, with limited exceptions.

17

18 Q. What is the purpose of the testimony that you will be presenting before the Commission
19 at this time?

20

21 A. My testimony addresses disputed issues pertaining to pole attachment rental rates being
22 charged by PSNH in connection with TWC's provision of VoIP service to areas of New
23 Hampshire in which PSNH poles are located. Specifically, I will describe TWC's
24 services offered in New Hampshire, including some basic facts about TWC's

1 interconnected VoIP services, why access to PSNH poles is essential in delivering
2 TWC's services to New Hampshire residents, the general process for obtaining access to
3 PSNH poles, the remuneration paid by TWC to PSNH in connection with pole
4 attachments, and the specific dispute between TWC and PSNH pertaining to charges for
5 VoIP services. I will also comment on the workpapers submitted by Unitil Service Corp.
6 in this proceeding in support of its pole attachment rental rate calculation.

7
8 Q. Do you need to qualify your testimony in any way?

9
10 A. Yes, in one respect. It is my understanding that the parties have not yet engaged in
11 discovery. In the event that new or additional information is learned once discovery is
12 commenced, some amendment(s) to my testimony may be required.

13
14 **Testimony**

15 **Background**

16
17 Q. Please explain TWC's operations in the State of New Hampshire.

18
19 A. TWC is a cable television operator that provides various communications services over
20 its cable systems to subscribers in 51 communities throughout New Hampshire. TWC's
21 services include traditional cable television service, including state-of-the-art high-
22 definition video and video on demand service, broadband Internet access service, and
23 digital voice services. In addition, TWC has provided its broadband Internet service
24 (including cable modems, monthly service and installation) at no cost to public schools

1 and libraries throughout the State. Further, TWC is a participating partner in
2 Connect2Compete, a national nonprofit organization that is working to help Americans
3 access technology in several ways, including by offering discounted high-speed Internet
4 access. TWC provides its state-of-the-art services to approximately 60,000 residential
5 and commercial subscribers in New Hampshire, and its facilities are available to
6 approximately 84,000 homes.

7
8 Q. Please describe TWC's efforts to deploy broadband services in New Hampshire.

9
10 A. In the last five years alone, TWC has invested approximately \$12 million to maintain,
11 expand and upgrade our cable broadband facilities within New Hampshire so we can
12 deliver increased video, broadband Internet access, voice and other advanced services to
13 an ever-growing percentage of our customers. So far this year, TWC has increased
14 standard broadband speeds throughout the State to 10 Mbps x 1Mbps; upgraded recently
15 acquired cable plant serving Waterville Valley to offer broadband, digital voice and
16 advanced video services; and expanded services to 162 new homes in Dalton, New
17 Hampshire. In 2011, TWC expanded its hybrid fiber optic coaxial network by over 40
18 miles and in 2010, TWC built new fiber optic infrastructure throughout the Town of
19 Shelburne and the Berlin/Gorham area (including the communities of Berlin, Dalton,
20 Gorham, Groveton, Randolph, Jefferson, and Lancaster), offering broadband Internet
21 access, advanced video and voice services to this community for the first time. With over
22 2,000 miles of fiber optics in New Hampshire, TWC now offers broadband in 100% of its
23 footprint. Much of New Hampshire is less densely populated and, as a result, as
24 recognized by economist Patricia D. Kravtin in testimony being submitted on behalf of

1 TWC and Comcast, the economic conditions for deploying physical infrastructure can be
2 challenging. *See* Prefiled Direct Testimony of Patricia D. Kravtin, filed on July 20, 2012,
3 on behalf of Time Warner Entertainment Company L.P. d/b/a Time Warner Cable,
4 Comcast Cable Communications Management, LLC, Comcast of New Hampshire, Inc.,
5 Comcast of Massachusetts/New Hampshire, LLC, and Comcast of Maine/New
6 Hampshire, Inc. (“Kravtin Testimony”), at 28.

7
8 New Hampshire residents perceive broadband services as a basic necessity.

9 Nevertheless, due in part to robust competition there are limits on what residents can and
10 will pay for broadband services. Moreover, the market for provision of broadband
11 services in New Hampshire is highly competitive. Accordingly, TWC is not in a position
12 to flow through higher pole costs to its customers.

13
14 Q. Does TWC offer voice services in New Hampshire?

15
16 A. Yes. TWC began to provide interconnected Voice over Internet Protocol (“VoIP”)
17 service in parts of the State at the end of 2005. TWC currently offers two interconnected
18 VoIP services in New Hampshire – Home Phone for residential customers and Business
19 Class Phone for business customers. In this testimony, I will refer to these functionally
20 comparable services together as “interconnected VoIP service.” TWC has continued to
21 expand the locations in which it provides interconnected VoIP service in most areas of its
22 footprint in New Hampshire where video and broadband Internet access services are
23 available. However, it does not yet offer the service everywhere it provides video and
24 Internet access services.

1 Q. Does TWC offer “telecommunications services” in New Hampshire?

2

3 A. No. While TWC’s interconnected VoIP service does provide two-way voice
4 functionality, it differs from traditional “telecommunications service” in various ways.

5 For example, TWC’s interconnected VoIP service:

6 • requires that a customer have specialized IP-compatible customer premises

7 equipment and a broadband connection to the customer’s premise;

8 • includes various additional features or capabilities that permit the customer to

9 manage his or her communications dynamically;

10 • generally is offered at a fixed price that does not vary based on the distance that a

11 call travels from end to end;

12 • does not require the customer to maintain a dedicated communications channel

13 during the course of a communications session; and

14 • enables a customer to engage in simultaneous voice sessions over a single

15 broadband connection without dedicating capacity to maintain two open circuits at

16 the same time.

17 There are also differences in the way that interconnected VoIP calls are routed

18 geographically. Unlike traditional intrastate calling, TWC’s interconnected VoIP signals

19 often traverse state boundaries even when the called and calling parties are both in New

20 Hampshire. When conversion is necessary, the IP voice packets pass through two Media

21 Gateway Devices located in Portland, Maine, which then convert the packets into

22 traditional TDM/circuit-switched voice signals for delivery to a wholesale carrier for

23 subsequent transmittal over the PSTN. The “soft management” services provided to

24 TWC’s New Hampshire VoIP customers, such as signaling and routing, are provided by

1 switches not located in New Hampshire. And, communications made using TWC's
2 interconnected VoIP service may involve the retrieval of information stored on servers
3 located outside of the state (for example, the retrieval of a voicemail). In fact, at no time
4 has TWC provided traditional circuit switched telephone services in New Hampshire.

5
6 Q. Please describe TWC's attachments to PSNH poles.

7
8 A. TWC's communications facilities are connected to poles owned by PSNH in certain
9 locations within the State of New Hampshire. PSNH poles come in standard lengths of 5
10 foot increments, such as 30, 35, 40 or 45 feet. *See Exhibit JPL-1 at 5.* The poles are
11 placed along public rights of way, public easements and utility easements and act as
12 support structures for utility distribution facilities. In a typical pole arrangement, shown
13 in Exhibit JPL-2 and reproduced here for convenience,



14
15

1 the facilities of each party are placed in a defined location below electric lines. Electrical
2 primary and secondary circuits are located at the top of the pole. The horizontal piece is
3 known as a “crossarm,” and is used to place electric facilities below the electrical lines
4 one often finds streetlight brackets. Incumbent telephone lines are located at the bottom
5 of the pole. Cable system lines are typically placed 12 inches above telephone, and
6 (usually) 40 inches below power, in surplus space between telephone and electrical lines.

7
8 Q. Do TWC’s New Hampshire attachments differ based upon the broadband services
9 provided over such attachments?

10
11 A. No. The same plant that is used to deliver digital television and broadband Internet
12 services to TWC’s New Hampshire customers is used to deliver TWC’s interconnected
13 VoIP services. There is absolutely no difference in the physical plant attached to the
14 pole. Nor is there any additional burden on the pole owner. Exhibit JPL-3, reproduced
15 below for the sake of convenience, is a picture of a standard cable pole attachment, which
16 consists of a two inch bracket bolted to a pole that supports a messenger strand. TWC’s
17 coaxial cable and fiber is attached to the messenger strand.



1
2
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12

The attachment does not vary or require additional space on the pole depending on the services that are provided over the internal fiber optic strands.



Exhibit JPL-4, reproduced above, depicts the fiber optic strands inside a cable of the nature used by TWC. When TWC transmits additional bits over its fiber to add a new video channel, broadband bandwidth or voice service, there is no physical impact on the pole attachment. In other words, lighting a strand of fiber to add a service does not affect the actual fiber cable that is attached to the pole.

1 **Essential Facility**

2

3 Q. Is access to PSNH poles necessary for deployment of TWC plant in New Hampshire?

4

5 A. Yes. Affordable access to PSNH poles is an essential component of TWC's network

6 deployment. Almost all poles in PSNH's electric distribution area to which aerial

7 facilities may be attached are owned by PSNH, FairPoint Communications, Inc.

8 ("FairPoint") (previously Verizon New England, Inc.), or, most commonly, both, on a

9 jointly owned basis. PSNH serves 211 New Hampshire communities or 75 percent the

10 State, according to PSNH's service territory map posted to its website,

11 <http://www.psnh.com/ContructionServices/PSNH-Service-Territory.aspx>.

12

13 Q. Why doesn't TWC build its own poles?

14

15 A. Zoning, environmental, municipal ordinance and other constraints make it impractical for

16 TWC to install redundant pole plant. The electric and incumbent phone utilities typically

17 have rights-of-way and easements to place poles granted by governmental authorities.

18 The social, aesthetic, and other costs of duplicative pole lines have long been avoided by

19 requiring cable operators to use the surplus space on preexisting poles for attachment.

20

21 Q. Are PSNH owned or controlled poles the only poles to which TWC is attached in New

22 Hampshire?

23

24 A. No. In addition, in communities that are not served by PSNH, TWC is attached to poles

25 owned by Central Maine Power, National Grid, FairPoint, Contocook Valley Telephone,

1 Littleton Water and Light, and Municipal Electric Department. To be clear, however,
2 attaching to these other poles would not be sufficient.

3

4 **PSNH Pole Agreements**

5

6 Q. Please explain the current pole attachment rental arrangement between TWC and PSNH.

7

8 A. TWC and PSNH are parties to three three-party pole attachment agreements: (1) Pole
9 Attachment Agreement dated February 6, 2004 between Verizon New England, Inc.
10 (predecessor to FairPoint) and PSNH and Time Warner Entertainment Co., L.P. (“2004
11 Pole Attachment Agreement”); (2) Aerial License Agreement dated October 27, 1998
12 between New England Telephone and Telegraph Company d/b/a Bell Atlantic-New
13 England and Public Service Company of New Hampshire and Contoocook Valley
14 Telephone Company, Inc. and State Cable TV Corporation (“1998 Pole Attachment
15 Agreement”); and (3) Aerial License Agreement dated August 17, 1993 between New
16 England Telephone and Telegraph Company and Public Service Company of New
17 Hampshire and Grassroots Cable Systems, Inc. (“1993 Pole Attachment Agreement”).
18 *See Exhibit JPL-5.*

19

20 Q. Are these agreements still in effect?

21

22 A. Yes. PSNH bills TWC semiannually for its pole attachments and also directly for the
23 costs it incurs in inspecting, rearranging and/or replacing its facilities to accommodate

1 TWC's attachments pursuant to the pole attachment agreements, and TWC abides by the
2 terms and conditions of the agreements in attaching to poles.

3

4 Q. Has PSNH ever stated orally or in writing that any one of the pole agreements is not in
5 effect?

6

7 A. No. However, in a breach of contract complaint filed with the Merrimack County
8 Superior Court, which was subsequently removed to the Federal District Court of New
9 Hampshire, PSNH cites only to the most recent of the three pole attachment agreements,
10 the 2004 Pole Attachment Agreement, claiming that the 2004 Pole Attachment
11 Agreement dictates the parties' pole rental arrangements.

12

13 Q. Are the rates, terms and conditions of these pole agreements reasonable?

14

15 A. Generally speaking, aside from rate issues, TWC has not encountered problems with the
16 way that the pole agreements are interpreted in the field. However, as I address below,
17 the rate terms and conditions relied upon by PSNH in support of its claim that it may
18 unilaterally dictate the rates charged for TWC pole attachments are unjust and
19 unreasonable.

20

21

1 **Rates**

2

3 Q. What rate(s) does TWC currently pay PNSH for pole rental?

4

5 A. TWC most recently paid an annual rental rate of \$10.07 for attachments to poles solely
6 owned by PNSH (SO) and \$5.04 for poles jointly owned by PNSH and FairPoint (JO) for
7 rent billed for January 1 to June 30, 2012. Because the rent is annual and the billing
8 cycle is semi-annual, the amount of the invoice and payments are half the total amounts
9 owed per year. Significantly, however, the rates that TWC paid are not the full amount
10 of what PNSH claims are owed.

11

12 Q. Please explain.

13

14 A. PNSH's invoice dated March 16, 2012 sought to charge annual rental rates of \$10.07 and
15 \$5.04 (on a semi-annual basis) for "TV and Internet" attachments to 595 solely owned
16 (SO) and 21,565 jointly owned (JO) poles respectively, and \$22.96 and \$11.48 for
17 "Communications" attachments to 560 solely owned (SO) and 16,712 jointly owned (JO)
18 poles respectively. *See* Exhibit JPL-6. (The rates for jointly owned poles are half of the
19 solely owned amounts, reflecting, upon information and belief, FairPoint's 50 percent
20 ownership interest in the poles. Based upon the information provided on the invoice,
21 more than 97 percent of the PNSH poles to which TWC is attached are jointly owned
22 with FairPoint. PNSH also lists a Tri-Owned (1/3) rate but has never billed TWC such
23 rate.) The March 16, 2012 invoice uses the same bifurcated rate format that PNSH began
24 applying in 2006 and, it is my understanding, intends to use going forward, unless the

1 Commission orders otherwise. I have reproduced PSNH's March 16, 2012 invoice sums
2 here:

	TV & Internet			Urbanized Communications			Non-Urbanized Communications		
	Joint	Sole	Tri	Joint	Sole	Tri	Joint	Sole	Tri
Attachment Rate	\$5.04	\$10.07	\$3.36	\$7.61	\$15.22	\$5.07	\$11.48	\$22.96	\$7.65
Total Poles	21,565	595	0	0	0	0	16,712	560	0
Column Total	\$108,687.60	\$5,991.65	\$0.00	\$0.00	\$0.00	\$0.00	\$191,853.76	\$12,857.60	\$0.00

3

Annual Total	\$319,390.61
Due This Billing	\$159,695.31

4

5 Q. Please explain why TWC has not paid the full invoiced amounts.

6

7 A. TWC paid the rates charged by PSNH for "TV & Internet" because these rates were
8 consistent with rates calculated using the federal formula applicable to cable and
9 comingled Internet service ("FCC Cable Rate Formula"). As explained by economist
10 Patricia D. Kravtin, this is the correct formula to use when calculating the rates for TWC
11 attachments. *See* Kravtin Testimony.

12

13 Q. Do you understand the basis for the higher \$22.96 SO and \$11.48 JO rates that PSNH
14 claims to be due for "Communications attachments"?

15

1 A. I believe so. In a letter dated November 18, 2011, PSNH stated its position that
2 “[b]ecause Time Warner’s attachments are for the purpose of providing
3 telecommunications service, Time Warner is responsible for payment of the rate
4 applicable to attachments used for the provision of telecommunications services.” *See*
5 Exhibit JPL-7. In addition, based upon material submitted by PSNH in connection with
6 this docket on June 8, 2012, I have confirmed that PSNH derived the amount using the
7 FCC’s Historic Telecom Formula. *See* Exhibit JPL-1.

8

9 Q. Was the March 2012 invoice the first year that PSNH proposed to charge an additional
10 amount for telecommunications service?

11

12 A. No. For each bi-annual billing period beginning January 1, 2006 to June 30, 2006
13 through January 1, 2012 to June 30, 2012, PSNH has attempted to impose a surcharge for
14 a certain number of Time Warner attachments that it defines as “Communications.” *See*
15 Exhibit JPL-6. In each semiannual invoice from 2006 to 2012, PSNH has listed
16 attachment fee amounts for “TV & Internet” and higher attachment fee amounts for
17 “Communications.” *See* Exhibit JPL-6. The invoices also listed different charges for
18 Communications in Urbanized and Non-Urbanized areas. However, TWC has never been
19 charged the rates for Urbanized areas.

20

21 PSNH’s invoices continued with these apparent FCC attachment classifications in setting
22 rates after this Commission assumed pole attachment jurisdiction in 2008, after this
23 Commission’s pole attachment rules became effective in December 2009, and after the
24 FCC’s adoption of the Revised Telecom Rate Formula. *See* Exhibits JPL-6 and JPL-7.

1 Even since the State adopted SB48, PSNH has not indicated its intent to stop imposing a
2 telecom surcharge.

3

4 Q. Did TWC ever pay the telecom surcharge imposed by PSNH?

5

6 A. No. At all times relevant to this Petition, TWC has objected to payment of pole
7 attachment rates based on PSNH's classification of certain TWC attachments as
8 telecommunications and PSNH's apparent use of the FCC's Historic Telecom Rate
9 Formula to calculate those rates. Attached hereto as Exhibit JPL-8 are true and accurate
10 copies of letters that I sent to PSNH contesting PSNH's invoicing of rates that exceeded
11 the maximum rates permitted under the rules of the FCC and this Commission. The
12 letters dated in 2006 and 2008 were executed and sent to PSNH.

13

14 TWC did pay for all PSNH attachments at the amount charged for "TV & Internet"
15 attachments to the present. TWC has paid PSNH over \$1.2 million in pole attachment
16 fees during the period in dispute, from January 1, 2006 to the present, for all PSNH
17 invoiced attachments at the rate billed by PSNH for "TV & Internet."

18

19 Q. Is PSNH's claim supported by the parties' pole agreements?

20

21 A. No. Nothing in the parties' agreements contemplates, much less permits, PSNH to adopt
22 a bifurcated rate structure for attachments in New Hampshire. Appendix I of each
23 agreement lists the permissible "Attachment Fees and Charges." Appendix I to the 2004
24 Pole Attachment Agreement lists an initial, single annual cable rate of \$8.20 per
25 attachment to PSNH SO poles and half that for attachments to PSNH JO poles. The

1 appendices of the other two agreements similarly provide for a single attachment rate for
2 solely owned poles, which is then halved for jointly owned poles. In addition, each of the
3 agreements requires PSNH to comply with applicable law. *See* Exhibit JPL-5 (2004 Pole
4 Attachment Agreement, Section 15.6; 1998 Pole Attachment Agreement, Art. VI(C);
5 1993 Pole Attachment Agreement, Art. VI(C)). At all times relevant to the parties'
6 dispute, pole attachment rates have been limited by regulation, either at the FCC or this
7 Commission.

8
9 Q. Where did PSNH get the idea that it could create separate fee structures?

10
11 A. PSNH has attempted to characterize application of the FCC's Historic
12 Telecommunications Formula as a change in the amount of Attachment Fees and Charges
13 governed by Section 3.1.3 of the 2004 Pole Attachment Agreement. However, institution
14 of a bifurcated rate structure is not a change in the amount of the rate. When the parties
15 entered the pole agreements the attachment rates were governed by federal laws
16 governing pole attachments, including the FCC rules governing pole attachment rental
17 rates. At the time, the rules contemplated a rate for cable attachments and a separate rate
18 for telecommunications attachments. However, none of the agreements referenced or
19 contemplated a bifurcated rate structure in New Hampshire.

20
21 There is, however, a mention of separate rates for cable attachments and
22 telecommunications attachments in Appendix I of the 2004 Pole Attachment Agreement,
23 an agreement that was based on a template devised by FairPoint's predecessor, Verizon
24 New England Inc. Importantly, though, the separate rates listed there applied only to

1 attachments in *Vermont*, a state which provided for such bifurcated rates at that time. The
2 listed rates for other states in the region, including, tellingly, New Hampshire, do not
3 include separate rates for cable and telecommunications attachments. The breakout of
4 separate rates – for Vermont – is further evidence that all parties to the 2004 Agreement,
5 including PSNH, were well aware that cable operators were offering voice services in
6 2004.

7
8 Q. Are you saying that under the agreements PSNH could not ever increase its rates?

9
10 A. No. In fact, PSNH has increased the “TV & Internet” rate annually since the agreements
11 were entered. TWC has not objected to, and has in fact paid, PSNH’s annual rate
12 adjustments for “TV & Internet” (sole and joint). I also understand that PSNH believes
13 that pursuant to Section 3.1.3, it could effectuate *any* changes to the fees and charges and
14 such rates would become effective unless TWC both notified PSNH that such changes
15 were unacceptable *and* submitted the issue to the regulatory body asserting jurisdiction
16 over the 2004 Pole Attachment Agreement.

17
18 Q. Do you agree that the rates automatically became effective unless the conditions in
19 Section 3.1.3 were satisfied?

20
21 A. No. First, this provision of the 2004 Pole Attachment Agreement conflicts with other
22 provisions in the same agreement. For example, Section 3.5, entitled “Billing Disputes,”
23 incorporates the dispute resolution provisions of Section 15.10, which require PSNH to
24 respond in writing to complaints that a term or condition is unjust and unreasonable

1 (which TWC has done annually). The Section 15.10 dispute resolution procedure
2 requires a written response from the Licensor (PSNH) prior to triggering any further
3 obligation on the part of the Licensee (TWC). Notwithstanding TWC's clear objection to
4 the telecom surcharge, PSNH did not respond in writing to TWC until its November 2011
5 letter, just prior to filing its complaint. Nor did PSNH request to meet with TWC to
6 discuss its objection to the telecom surcharge prior to filing its court complaint. Second,
7 any provision that would allow PSNH to automatically effectuate a change in its rate
8 structure unless TWC filed a complaint with a regulatory body is per se unreasonable.

9
10 Q. How so?

11
12 A. First, the provision presumes that PSNH's rate change is reasonable unless the attaching
13 entity challenges it before a regulatory body within a 30 day period during the 60 day
14 notice period. This runs counter to established policies in New Hampshire favoring
15 resolution by the parties and good faith negotiation of disputes. As this Commission has
16 stated, parties are encouraged to settle issues through negotiation and compromise. *See,*
17 *e.g., In re Northern Utilities, Inc. Petition for Permanent Rate Increase, Order Approving*
18 *Settlement, Docket No. DG 11-069, 2012 N.H. PUC LEXIS 37, *11 (Apr. 24, 2012).* In
19 addition, because certain of the information required to calculate pole attachment rates is
20 in the custody and control of the utility (such as the pole count), the attaching entity may
21 not be able to determine the reasonableness of the charges within the allotted 30 day time
22 period absent cooperation by the pole owner. An attacher must be able to challenge a
23 rate that does not comply with the maximum just and reasonable rate under PUC
24 regulations at any time.

1 Second, the provision requires an attacher to pay PSNH a disputed amount during the
2 period in dispute (which actually contradicts Section 3.5.1, which provides that the
3 attacher shall pay the non-disputed portions of a disputed bill or invoice). An attacher
4 should not be required to pay a disputed amount unless the dispute is resolved against the
5 attacher.

6
7 Third, any provision in the 2004 Pole Attachment Agreement that would allow PSNH to
8 apply a telecom surcharge based on an attacher's provision of VoIP services unless
9 challenged in 30 days is unreasonable. As explained in TWC's Petition, the FCC never
10 applied its telecom formula to VoIP service. The FCC's historic telecom formula on
11 which PSNH relies has been superseded. The New Hampshire legislature recently
12 amended RSA 362:7 to prohibit, with limited exception, laws or rules that have the effect
13 of regulating VoIP service. And, as more fully explained by economist Patricia D.
14 Kravtin the appropriate rate to be charged TWC's commingled video, data and voice
15 services is calculated using the FCC Cable Rate Formula. *See* Kravtin Testimony.
16 Among other things, the invoices sought to impose a telecom surcharge in communities
17 where TWC has never offered any type of voice service.

18
19 Q. Has any other NH pole owner sought to charge TWC a telecom surcharge?
20

21 A. No pole owner in New Hampshire other than PSNH has sought to impose a bifurcated
22 rate structure for TWC television, Internet and voice services or a surcharge on TWC
23 attachments carrying voice services.
24

1 Q. Do you have concerns about other terms and conditions in the 2004 Pole Attachment
2 Agreement?

3
4 A. Yes, I have concerns and recommendations about Subsections 3.4.1, 3.5.1 and 3.5.2.
5 Specifically, Subsection 3.4.1 requires an attacher to pay a late fee of 1.5% of the amount
6 due starting 30 days after the date of the utility's invoice. In addition, the provision
7 allows the utility to change the late fee at any time "at its sole discretion" to "reflect
8 prevailing market conditions." Throughout this period, PSNH continued to assess TWC
9 for alleged underpayments and to impose late payment charges on such alleged
10 underpayments. *See* Exhibit JPL-6. This late fee is unjust and unreasonable and should
11 be limited to the interest rate applied to pole refunds and under payments as provided in
12 Puc 1304.08 – a rate equal to the prime rate. Subsection 3.5.1 requires an attacher to
13 deposit any disputed amounts in excess of \$10,000 into an interest-bearing escrow
14 account until the dispute is resolved. This provision is unjust and unreasonable because
15 an attacher, who has much less bargaining power than the utility, should not be required
16 to bear the burden of paying disputed amounts into escrow. There is no risk to the utility
17 of failing to collect underpayments, plus interest, in the event the utility prevails in the
18 dispute. Subsection 3.5.2 allows the utility to stop performing pole surveys, inspections
19 or make-ready work and to stop issuing licenses and processing attachment applications
20 if an attacher has not paid a disputed amount to the utility or into the escrow. This
21 requirement is unjust and unreasonable and a utility should not be permitted to terminate
22 pole access during the course of a good faith billing dispute.

23

1 Q. Have the parties been able to resolve the appropriate rental rate to be applied to TWC's
2 attachments?

3
4 A. No. Unfortunately, the parties remain far apart on the matter in dispute and TWC
5 believes that further attempts to resolve this matter without the Commission's
6 involvement would not be productive. On February 1, 2012, PSNH filed a Writ of
7 Summons asserting contract and debt claims against TWC in Merrimack Superior Court,
8 without any notice or warning to TWC. TWC removed the matter to the Federal District
9 Court for the District of New Hampshire shortly thereafter. On March 30, 2012, TWC
10 filed its Petition for Resolution of Dispute with PSNH with this Commission.

11
12 Q. Does TWC also have a dispute with Unitil concerning the amount of pole attachment
13 rental rates imposed on VoIP services?

14
15 A. TWC does not currently have attachments to Unitil poles. However, I understand that the
16 Commission intends to determine whether Unitil's pole attachment rental rate is just and
17 reasonable, and therefore that other pole owners in the State may be expected to set rates
18 in accordance with the Commission's ruling. Based upon Unitil's submission of its
19 Appendix I in this proceeding, dated June 12, 2012, I understand that Unitil has
20 calculated a rental rate using a variation of the FCC's revised telecommunications
21 formula. For the reasons more fully explained in Ms. Kravtin's testimony, I believe the
22 Cable Rate Formula is the more appropriate formula. *See* Kravtin Testimony. Moreover,

1 I understand that there are some problems in the way that Unitil has applied the FCC's
2 revised telecom formula.

3

4 Q. What would be the impact on TWC if PSNH were permitted to utilize the FCC's Historic
5 Telecom Formula to calculate its rates, and other utilities followed suit?

6

7 A. TWC currently pays close to \$1 million annually in pole attachment fees to New
8 Hampshire pole owners. If every utility were to increase rents to levels permitted by the
9 FCC's Historic Telecom Formula, this amount would double.

10

11 Q. How does the amount that TWC pays to PSNH for pole rental impact TWC's investment
12 decisions?

13

14 A. Like most companies, TWC evaluates broadband investment opportunities based on the
15 anticipated costs and revenue opportunities they entail. As a result, TWC's decisions to
16 deploy broadband and offer advanced broadband services such as VoIP are impacted by
17 the cost of deployment, including pole rents.

18

19 **Non-Recurring Charges**

20

21 Q. Is rent the only money TWC pays to PSNH?

22

23 A. No. In addition to paying annual per pole rent, TWC also directly reimburses PSNH for
24 all of the out of pocket expenses related to TWC's attachments, including processing its
25 permit applications, pre- and post-construction inspections, and any work on the pole

1 necessary to accommodate TWC's attachments (i.e., make-ready work). So, for example,
2 if PSNH determines that one or more poles cannot accommodate a proposed TWC
3 attachment without rearrangement of existing attachments or the replacement of one or
4 more poles with taller or stronger poles to comply with safety requirements, PSNH will
5 not approve TWC's application unless and until TWC pays the entire cost for such
6 rearrangements or replacements. In the event that a new pole must be installed, TWC is
7 billed for the entire cost of the pole replacement as well, even though the new poles
8 become the property of PSNH. The annual per pole rent itself, paid to make attachments
9 to PSNH poles, is in addition to all of these make-ready and related expenses.
10 Occasionally, PSNH will charge TWC to correct pre-existing non-compliance not caused
11 by TWC. I understand that the FCC and courts reviewing the FCC rate for cable
12 television services understand that pole owners are not only compensated through annual
13 rent but also through direct reimbursements.

14
15 Q. Does that conclude your testimony at this time?

16
17 A. Yes.