

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

ELECTRIC AND TELEPHONE UTILITIES, REVIEW OF UTILITY POLE ISSUES
DT 12-246

UNIVERSITY SYSTEM OF NEW HAMPSHIRE'S PETITION TO INTERVENE

The University System of New Hampshire ("USNH") hereby petitions the New Hampshire Public Utilities Commission to intervene in the above-captioned proceeding, and in support thereof states as follows:

1. On July 1, 2010, USNH was awarded a grant of up to \$44.5 million (the "Broadband Build-out Grant") by the U.S. Department of Commerce under the Broadband Technology Opportunities Program ("BTOP"). The purpose of BTOP is, among other things, (a) to fund the construction of infrastructure in areas and communities where it otherwise may not be possible or economically viable and (b) to deploy new or improved broadband Internet infrastructure and connect community anchor institutions. The Broadband Build-out Grant is intended to help fund a public-private collaboration to construct an open-access, high-speed, middle-mile, fiber optic network (the "Middle Mile Network") designed to support public educational, economic, public safety and governmental needs primarily in certain unserved and underserved areas in the State of New Hampshire (the "Project"). The Project has been actively supported by the Governor of the State of New Hampshire, members of the State's Congressional delegation, the State's Department of Resources and Economic Development, Department of Transportation, and Department of Safety, and the National Telecommunications and Information Administration of the United States Department of Commerce.

2. After USNH was awarded the Grant, it issued a request for proposals (the “RFP”) to solicit proposals to build, provide and/or operate the Middle Mile Network. As a result of the RFP process, USNH selected New Hampshire Optical Systems, Inc. (“NHOS”) to construct the Middle Mile Network, which requires NHOS to install cable on approximately 22,000 utility poles owned by various New Hampshire utilities. In order to comply with the terms of the Grant, the Middle Mile Network must be completed by June 30, 2013.

3. Construction of the project has generally proceeded as planned, but it is USNH’s understanding that NHOS has been unable to attach its cable to a number of utility poles because of the failure of parties with existing attachments on those poles (“Objecting CLECs”) to move their facilities and the reluctance of the relevant pole owners to take action to move those facilities themselves or cause them to be moved. It is further USNH’s understanding that the grounds asserted by the Objecting CLECs for their failure to move their facilities are not consistent with industry practice and do not comply with their obligations under their pole attachment agreements with the pole owners.

4. The Objecting CLECs’ failure to move their facilities in a timely fashion is threatening the success of the Project because (1) NHOS, as a non-party to the Objecting CLECs’ pole attachment agreements with the relevant pole owners, cannot directly enforce the Objecting CLECs’ obligations under those agreements and (2) the pole owners that are parties to those agreements are extremely reluctant or unwilling to take any legal action to require the Objecting CLECs to move their attachments because they wish to avoid litigation and/or are uncertain whether they will have the support of the Public Utilities Commission staff if they take decisive action to exercise any rights they may have to move the Objecting CLECs’ attachments if the Objecting CLECs fail to do so themselves in a timely fashion.

5. Pole attachment agreements between pole owners and individual attaching entities are not simply private contracts that affect the signatories to those agreements. Rather, they are a central part of a regime that has been implemented by the Commission to enforce its authority to oversee utility pole attachments and ensure they are governed by rules that are reasonable and non-discriminatory. Failure by attaching entities to comply with their obligations under those bilateral agreements has a direct effect on other parties that seek to attach to utility poles and to the public that is served, or wishes to be served, by existing and prospective attaching entities. Similarly, the inability, reluctance, and failure of pole owners to enforce their rights under such agreements has a significant detrimental effect on other entities that either have existing pole attachments or wish to attach new facilities to poles, as well as to the public more generally.

6. The circumstances encountered by NHOS and USNH with regard to construction of the Middle Mile Network are directly relevant to the issues identified for consideration in the Commission's order of notice in this proceeding and, in fact, it is those circumstances that gave rise to the Commission's decision to open this proceeding, as set forth in its Order No. 25,386.

7. USNH's rights, duties, privileges, immunities and other substantial interests are likely to be affected by this proceeding. USNH's participation in this proceeding will be consistent with the interests of justice and will not impair the orderly and prompt conduct of the proceeding. In particular, a better understanding of the problems encountered by USNH and NHOS in constructing the Middle Mile Network, the delays caused by parties with existing pole attachments, and the manner in which the Commission's rules relating to pole attachments are implemented will assist the Commission in determining what changes may be needed to its regulatory framework, including new legislation and expanded regulations.

WHEREFORE, USNH respectfully requests that it be granted full intervenor status in the above-captioned proceeding.

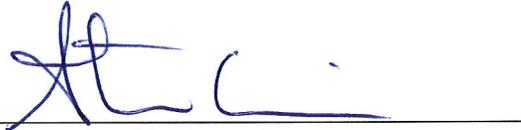
UNIVERSITY SYSTEM OF NEW HAMPSHIRE

By its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: August 20, 2012

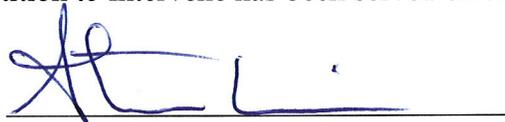
By:



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Certificate of Service

I hereby certify that a copy of this Petition to Intervene has been served on the parties identified on the service list in this case.



Steven V. Camerino