

Exhibit 6

NYPSC's T-Mobile Decision



65 of 87 DOCUMENTS

Proceeding on Motion of the Commission Concerning Wireless Facility Attachments to
Utility Distribution Poles

CASE 07-M-0741

New York Public Service Commission

2007 N.Y. PUC LEXIS 235

June 27, 2007, Issued and Effective

DISPOSITION: [*1] ORDER INSTITUTING PROCEEDING

PANEL: COMMISSIONERS PRESENT: Patricia L. Acampora, Chairwoman; Maureen F. Harris; Robert E. Curry, Jr.; Cheryl A. Buley

OPINION: At a session of the Public Service Commission held in the City of Albany on June 20, 2007

BY THE COMMISSION:

BACKGROUND

On August 6, 2004, an Order and Policy Statement n1 governing wire attachments to utility poles was issued. On February 12, 2007, Omnipoint Communications Inc. d/b/a T-Mobile USA (T-Mobile) petitioned to apply the August 6, 2004 pole attachment Order, Policy Statement, and rates under PSL § 119-a to wireless attachments.

n1 Case 03-M-0432, Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues, Order Adopting Policy Statement on Pole Attachments, (issued August 6, 2004).

THE PETITION

In its petition, T-Mobile requests that our wire pole attachment policies and rates under PSL § 119-a be applied to wireless attachments. T-Mobile notes that [*2] we approved a joint proposal n2 by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) and its affiliate, National Grid Communications (Grid Com), for wireless attachments to National Grid's distribution poles and the attachment rates proposed by the companies. We also clarified that National Grid's wireless attachment rates applied to attachments by Commercial Mobile Radio Service (CMRS) providers as well as competitive local exchange companies (CLECs).

n2 Case 03-E-1578, Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications Inc. for Approval of a Pole Attachment Rate for Certain Wireless Attachments to Niagara Mohawk's Distribution Poles, Order Approving Petition with Modifications (issued April 7, 2004).

T-Mobile argues that application of our wire pole attachment rates and policies to wireless attachments is required by law because the language of PSL § 119-a is "attachments," not "wire attachments." It continues that [*3] attachments to utility poles are often the only option available for extending service coverage because permission to build towers is difficult to obtain from local governments. T-Mobile asserts that our action is needed because many pole owners treat wireless attachments differently from wire attachments. T-Mobile asks for an order:

1. stating that pole attachment policies, time frames, and procedures in the Commission's August 2004 Order and rates under PSL § 119-a shall apply to wireless attachments;
2. clarifying that pole owners must provide wireless carriers with reasonable attachment agreements;
3. stating that our finding in Case 03-E-1578, that Grid Com's proposed pole top mounted antennas do not compromise pole safety, creates a presumption in New York that pole top-mounted antennas are allowed;
4. clarifying that pole owners must provide pole change outs and other alterations to accommodate wireless attachments as required of National Grid in Case 06-E-0082.

COMMENTS

A Notice of Proposed Rulemaking, pursuant to the State Administrative Procedures Act (SAPA), seeking comments on T-Mobile's petition was published on [*4] December 27, 2006. Comments were filed by: Sprint Spectrum, L.P. and Nextel of New York, Inc., jointly (Sprint Nextel) and AT&T. Joint comments were filed by: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Frontier Communications, New York State Electric & Gas Corporation, National Grid, Orange & Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Verizon New York, Inc. and The New York State Telecommunications Association, (Pole Owners). T-Mobile also filed comments in response to the SAPA.

AT&T supports T-Mobile's petition and the elimination of barriers and cost impediments to wireless deployment on utility poles.

Sprint Nextel also supports the petition, asserting that we should encourage collocation of wireless attachments on existing utility poles, which is beneficial to customers, carriers and local residents in hard-to-serve areas. It continues that in some residential neighborhoods and in areas with special-use restrictions, utility poles are the only viable option for attachments. Sprint Nextel argues that local governments often require cellular companies to blend antennas and facilities into existing facilities and [*5] that utility poles satisfy this requirement. Sprint Nextel argues that using utility poles for wireless attachments is beneficial because fewer new facilities will need to be constructed, something favored by local governments.

Sprint Nextel notes it has experienced delays and higher rates than those set under PSL § 119-a in negotiating wireless attachment agreements with pole owners. It asserts that, without our action, pole owners can "...exert monopoly power over the rates, terms and conditions of getting access to structures." n3 It cites a Massachusetts law n4 that requires utility owners to treat wireless attachments in a non-discriminatory way and requires utilities to expand the capacity of poles at the expense of the wireless attacher, if it can reasonably be done to accommodate wireless attachments. Sprint Nextel also supports a model agreement for wireless attachments and the rate structure approved for National Grid in Case 03-E-1578. Finally, Sprint Nextel supports the presumption that pole top-mounted antennas do

not compromise pole safety.

n3 Sprint Nextel comments at p 3.

[*6]

n4 Massachusetts Pole Attachment Law of 2006, MGL, c. 166 section 25A (amended 2006).

The Pole Owners oppose T-Mobile's petition arguing that under Opinion 97-10, n5 wireless attachments should be treated differently than traditional wire attachments and arranged by private negotiations between the attacher and pole owner. The Pole Owners state that there are other locations for wireless attachments such as street lights, buildings, towers etc. They contend that since not all pole infrastructure is the same, we should not make a finding that a certain structure is safe on all poles based on National Grid's specifications. The Pole Owners argue that T-Mobile should not raise the issue of wireless attachments in a proceeding that only encompassed wire attachments.

n5 Case 95-C-0341, In the Matter of Certain Pole Attachment Issues which Arose in Case 94-C-0095, Opinion No. 97-10 (issued June 17, 1997).

In response to the SAPA [*7] notice and in further support of its petition, T-Mobile argues that application of our pole attachment rates and policies to wireless attachments, including rates for make-ready work, pole replacements, work schedules, and agreements, would be beneficial. T-Mobile asserts that such application will further the competitive telecommunications environment in the State, economic investment in advanced communications service facilities, and assist in the development of the public safety network and Enhanced 911. T-Mobile reiterates that PSL § 119-a applies to "attachments" and there is no legal basis to exclude wireless attachments from the coverage of the statute. T-Mobile also points out that wireless attachments are in the National Electric Safety Code as an acceptable attachment, which, it argues, supports a finding that they are safe.

DISCUSSION

The wireless attachers have made important points about the benefits of allowing attachment of their facilities to utility poles quickly and at reasonable rates. The Pole Owners, on the other hand, resist a one size fits all approach to wireless facility attachments. They claim that what we approved [*8] for National Grid is not necessarily appropriate for all poles. The Pole Owners want to keep the status quo of negotiated agreements and rates for wireless attachments as set out in Opinion 97-10.

National Grid petitioned in November 2003 to allow wireless attachments, which included antennas on top of its poles and other facilities attached, to its poles under tariffed rates. In its most recent semi-annual report to the Commission, dated April 2, 2007, National Grid reported that no wireless attachments had been made to its distribution poles and no applications for attachments were under review. National Grid did not request that all wire pole attachment policies, including schedules, make ready work, etc. be applied to its wireless attachment process. In fact, it joined the other pole owners in opposing the application of our wire pole attachment policies and rates to wireless attachments.

Unlike telephone, cable and power facilities, which may only be attached to utility poles, wireless attachers have other options for attaching their facilities, such as buildings, existing towers, and newly constructed towers. Although attachers argue that it is sometimes difficult to get permission [*9] from local governments to erect new towers, it is appropriate for local governments and community residents to be involved in considering whether tall antenna

structures should be placed in their communities. If wireless attachers were given unrestricted access to all utility poles, local governments might be excluded from the decision-making process.

Wireless attachments occupy a much larger portion of a pole than the 12 inches used by a standard wire attachment. The wireless attachment contemplated by National Grid would use as much as 7 feet of pole space and include an antenna on top of the pole up to 9 feet tall. n6 Wireless attachment designs vary, which makes advance evaluation of their safety difficult. We are not applying pole attachment policies and rates to wireless attachments at this time. Because of the variation in wireless configurations, the status quo of a negotiated rate and process is more appropriate until more information is developed about wireless attachments generally on utility poles.

n6 National Grid Standard GS 1169 details practices and procedures for a 35kV Maximum Distribution Wood Pole Mounted Meter Power Supply and Antenna Installations (Fall 2003). The National Grid Standard for the installation of wireless antennas demonstrates the uniqueness of these attachments and provides specific guidelines for the antenna and its associated equipment. Figure 4 titled Wireless Communication Installation Details shows a communications antenna with a height of 9 feet at the top of a utility pole that is connected with communication cables that run from the antenna through the electric supply space to equipment enclosures, power supply and electrical meter that can be mounted at a minimum of 8 feet above grade. That installation demonstrates that the space used for such installations requires almost 100% of a utility pole if the antenna and all associated equipment and interconnecting cables are considered.

[*10]

Since wireless attachments usually involve placing facilities above the power area of the pole, special attention must be given to safety because such facilities could fall over onto power lines in high wind conditions or in heavy wet snow conditions resulting in power outages. While National Grid allows wireless attachments, it has comprehensive safety standards and requirements for such attachments and reserves the right to refuse to put wireless attachments on its poles or increase the height of poles to accommodate wireless attachments.

CONCLUSION

Until more information about wireless attachments to utility distribution poles is developed, we will not apply the Pole Attachment Order and Policy Statement to wireless attachments. Opinion 97-10 remains in effect as to non-standard attachments: they are subject to negotiation. National Grid's tariff and procedures also remain in effect. We will not decide the T-Mobile petition at this time but will institute a new proceeding and issue a Notice requesting comments in order to develop more information about wireless attachments to utility distribution poles, including: safety concerns; whether wire attachment time frames and other [*11] policies are appropriate for wireless attachments; standards for rates, terms and conditions; SEQRA issues; examples from attachers of inability to gain reasonable access to poles; as well as any other concerns of attachers, pole owners, local governments, and residents.

The Commission orders:

1. A proceeding is instituted to examine issues related to wireless attachments to utility poles.
2. A notice requesting comments shall be issued.
3. This proceeding is continued.

By the Commission

Legal Topics:

For related research and practice materials, see the following legal topics:

Communications LawCable SystemsPole AttachmentsCommunications LawTelephone ServicesCellular
ServicesCommunications LawTelephone ServicesWireless Services