

STATE OF NEW HAMPSHIRE

Before the

PUBLIC UTILITIES COMMISSION

Tab 37

ORIGINAL	
N.H.P.U.C. Case No.	DT 12-084
Exhibit No.	# 3
Witness	P. Kravtin - E. Davis
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Time Warner Entertainment Company L.P.
d/b/a Time Warner Cable

Petition for Resolution of Dispute with
Public Service Company of New Hampshire

DT 12-084

PREFILED REPLY TESTIMONY OF

PATRICIA KRAVTIN

ON BEHALF OF

TIME WARNER CABLE AND

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC

COMCAST OF NEW HAMPSHIRE, INC.

COMCAST OF MASSACHUSETTS/NEW HAMPSHIRE, LLC

COMCAST OF MAINE/NEW HAMPSHIRE, INC.

October 31, 2012

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1 **INTRODUCTION**

2 **Q. Please state your name, business address, and occupation.**

3 A. My name is Patricia D. Kravtin. My business address is 57 Phillips Avenue,
4 Swampscott, Massachusetts. I am an economist in private practice specializing in the analysis of
5 telecommunications, cable and energy regulation and markets.

6 **Q. Have you previously submitted testimony in this proceeding?**

7 A. Yes. I submitted prefiled direct testimony on July 20, 2012 on behalf of Time Warner
8 Cable ("TWC") and Comcast Cable Communications Management, LLC, Comcast of New
9 Hampshire Inc., Comcast of Massachusetts/New Hampshire, LLC and Comcast of Maine/New
10 Hampshire, Inc. (collectively "Comcast") addressing matters concerning the appropriate
11 methodology for determining just and reasonable rates for the attachment of cable television
12 service providers' and competitive local exchange carriers' ("CLEC") facilities to utility owned
13 poles pursuant to RSA 374:34-a and the six factor rate review standard set forth in PUC 1304.06.

14 **Q. As part of that testimony, did you provide a detailed summary of your educational
15 and professional background?**

16 A. Yes, I did. A detailed resume summarizing my training, previous experience, prior
17 testimony and reports was provided as part of that testimony. *See* Direct Testimony of PDK
18 Attachment 1.

19 **Q. Have you reviewed the direct testimony filed in this docket by Mr. Edward A. Davis
20 on behalf of Public Service of New Hampshire ("PSNH") on September 14, 2012?**

21 A. Yes, I have.

22 **Q. Are there areas of his testimony to which you wish to respond?**

1 A. Yes, there are. In my opening direct testimony, I explained why the historic FCC cable
2 rate formula (“Cable Formula”) is the methodology that will best serve to accomplish the six-
3 factor test in PUC 1304.06(a) and that produces pole rates that are more than compensatory to
4 pole owners. In addition, my testimony explained the numerous shortcomings of PSNH’s
5 reliance on the FCC’s old, rejected telecom formula (“Telecom Formula”) for “communications”
6 attachments as set forth in its June 8, 2012 pole rate calculations. In its recently filed testimony,
7 PSNH advocates alternative rate methodologies that would increase pole rates by factors of 200
8 to 300 percent, but indicates it would also find acceptable a uniform pole rate based on the old
9 Telecom Formula. PSNH’s apparent strategy of proposing absurdly high pole rates should not
10 mislead the Commission into believing that PSNH’s ultimate willingness to use the old, FCC
11 Telecom Formula as the basis of a uniform pole rate is in any way reasonable. Accordingly, in
12 this reply testimony I will show that PSNH has no principled rationale for its proposals other
13 than to allow it to exercise its monopoly control of poles to charge rents that greatly exceed its
14 costs associated with the attachment.

15 **Q. What is the purpose of your reply testimony?**

16 A. The purpose of this reply testimony is to respond to Mr. Davis in two principal respects:
17 1) areas in Mr. Davis’s testimony where he has made erroneous, misleading, and/or unsupported
18 assertions; and 2) areas in his testimony that Mr. Davis has appeared to concede in responses to
19 data requests, and as a result, would appear to agree, rather than disagree with my testimony on
20 these matters. Specifically, I will respond to Mr. Davis’s testimony in the following key subject
21 areas:

22 Rate Settlement and Impact-Related Issues: In the first section of this testimony, I

1 respond to Mr. Davis's overarching position that any changes from the current pole attachment
2 methodology should be delayed until 2015. I explain why Mr. Davis is incorrect that the PSNH
3 Rate Settlement is reason for delaying implementation of a unified pole attachment rate using the
4 FCC's historic cable rate formula ("Cable Formula"), and that there are also strong economic
5 and public policy reasons for immediate implementation.

6 Recovery of Pole Costs and Subsidy-Related Issues: In the second section of my
7 testimony, I address the numerous misrepresentations or misunderstandings Mr. Davis makes
8 with respect to the Cable Formula, explaining why Mr. Davis is incorrect in asserting that the
9 Cable Formula (i) does not allow PSNH to recover its full pole-related costs from third party
10 attachers and (ii) constitutes a subsidy to attachers from electric ratepayers. In fact, contrary to
11 Mr. Davis's testimony, and as recognized by the U.S. Congress, the Federal Communications
12 Commission ("FCC"), multiple state public service commissions and courts, including the U.S.
13 Supreme Court, the Cable Formula is not a subsidy rate and provides more than adequate and
14 just compensation for pole owners.

15 PSNH's Alternative Proposed Pole Rent Formula Methodologies: In the third section, I
16 address the three alternative pole attachment rate formulas presented by Mr. Davis, which
17 produce solely owned ("SO") pole rates of approximately \$39.87, \$29.21 and \$20.68
18 respectively compared with the current SO Cable Formula rate of about \$10. I explain why each
19 of the alternative rate formulas proposed by Mr. Davis, which range from doubling to
20 quadrupling the existing rates paid by cable operators in New Hampshire, would only further
21 distinguish New Hampshire as an outlier. Not only do PSNH's proposed formulas create pole
22 rates some three hundred to five hundred percent higher than the national average, they would

1 also discourage broadband deployment and competition in New Hampshire in conflict with the
2 factors set forth in N.H. Admin. Rule, PUC 1304.06(a).

3
4 **RATE SETTLEMENT AND IMPACT-RELATED ISSUES**

5 **Q. On pages 4 and 5 of his testimony, Mr. Davis states that “if there were to be a**
6 **reduction to [pole attachment] rates due to a change in methodology during the 5-year Rate**
7 **Settlement period, the Company would have a revenue shortfall unless the Commission**
8 **provided an opportunity to make an equal reconciling change to the Company’s**
9 **distribution service rates...The Commission cannot now eliminate a part of those revenues**
10 **in isolation without upsetting the overall revenue requirement calculus.” On that basis, he**
11 **recommends no change occur in pole rate methodology “until at least the end of the Rate**
12 **Settlement period, June 30, 2015.” Do you agree with his assertion of a “revenue**
13 **shortfall,” or the conclusion reached on that basis that no change in methodology be made**
14 **until 2015 at the earliest?**

15 **A. I do not agree with either Mr. Davis’s assertion that the Company would experience a**
16 **revenue shortfall that would need to be offset by changes to electric distribution rates if there was**
17 **a reduction to pole attachment rates due to a change in methodology (*i.e.*, adoption of the FCC**
18 **Cable Formula methodology as a unified broadband rate), or his conclusion that no change in**
19 **methodology should be made until after June 2015.**

20 First, under the terms of the Settlement Agreement, the Commission anticipated that
21 PSNH revenues might increase or decrease from the projected levels. Specifically, if
22 “exogenous events” in the aggregate cause revenue in a particular calendar year after 2010 to

1 decrease by more than \$1 million, PSNH is authorized to seek a rate adjustment from electric
2 customers in order to recover that revenue. Implicit in this mechanism is the recognition that
3 “exogenous” revenue changes that do not reach the \$1 million threshold are not material enough
4 to the company to justify revising customer rates. Thus, the Commission has essentially
5 determined that PSNH’s rates are just and reasonable unless the Company experiences a revenue
6 shortfall above \$1 million, in which case the Company may petition the Commission for a rate
7 adjustment. PSNH admits that it does not anticipate that any change in pole revenue would
8 trigger the \$1 million threshold, making this by PSNH’s own admission “a moot point” to begin
9 with. *See* PSNH Response to TWC-Comcast-005 reproduced in this reply testimony as
10 TWC/Comcast Reply Attachment PDK-1.

11 Second, the issue of a potential revenue shortfall is a red herring argument in any event,
12 given the very small effect of pole attachment revenues on the Company’s bottom line. The total
13 amount of pole attachment revenues included in the Company’s revenue requirement calculation
14 in DE 09-035 in the Cost of Service Study (“COSS”) underlying the Settlement Agreement are
15 \$1.89 million relative to a total Company distribution revenue requirement of approximately
16 \$312-million. *See* DE-09-935, Exhibit 2 Table 5 at 9, and Exhibit 3 Table 1B at 3 and Table 5 at
17 11, reproduced in TWC/Comcast Reply Attachment PDK-2 to this reply testimony. This amount
18 is only approximately 0.6% of the Company’s distribution revenue requirement. Assuming there
19 is any pole revenue reduction at all resulting from adoption of a unified rate using the Cable
20 Formula (a fact that PSNH has failed to demonstrate would occur) such reduction would be
21 relatively insignificant and represent an even smaller percentage of the Company’s overall
22 distribution revenue requirement. For example, if pole revenue fell by ten (10) percent -

1 \$189,900 – this reduction would be just 0.06% of the Company’s distribution revenue
2 requirement. Of course, PSNH has failed to show that any reduction in pole revenue would in
3 fact occur as explained further below.

4 Third, Mr. Davis’s testimony might lead one to believe that the Company has kept pole
5 attachment rates fixed during the period of the Settlement Agreement to date, and that is simply
6 not the case. As acknowledged in Mr. Davis’s response to TWC-Comcast Data Request 009 (*see*
7 TWC/Comcast Reply Attachment PDK-3), PSNH has adjusted its pole attachment rates annually
8 based on the most recent cost data reported in the FERC Form 1. In some years, rates have been
9 adjusted lower than the 2008 test year rates (*i.e.*, 2010 and 2011), and in others (*i.e.*, 2012),
10 PSNH increased its cable and telecom attachment rates above the 2008 test year rates. Mr. Davis
11 asserts in response to TWC/Comcast data requests that if a change in the Commission’s pole rent
12 formula results in a reduction in pole revenues below the 2008 “test year” projection this “would
13 result in a change in revenue requirements responsibility and, accordingly, delivery rates (*i.e.*,
14 distribution rates) that the Company would seek approval of by the Commission in a contested
15 proceeding.” *See* TWC-Comcast Data Request 010 reproduced here as TWC/Comcast Reply
16 Attachment PDK-4. It is noteworthy, however, that PSNH did not seek any such rate change
17 when its pole attachment rates declined below the 2008 test year in 2010 and 2011. There is no
18 real distinction between a reduction in pole attachment revenue arising from a change in
19 methodology and a revenue reduction that occurs under the same methodology that would justify
20 a contested rate case to adjust distribution rates. Accordingly, Mr. Davis’s statement made in
21 response to TWC-Comcast Data Request 010 would appear to be more posturing on his part than
22 reflective of the economic reality of the situation.

1 Fourth, even putting aside the immateriality of PSNH's aggregate pole attachment
2 revenues (or any potential diminution thereof) on the Company's bottom line, PSNH has
3 produced no evidence demonstrating that immediate adoption of the Cable Formula would, in
4 fact, cause PSNH's pole rental revenues to decline below the \$1.89 million 2008 test year
5 projection over the Rate Settlement period. Under such circumstances, in the absence of any
6 data demonstrating otherwise, it is fair to presume that PSNH will not experience a material, if
7 any, pole revenue shortfall over the Rate Settlement period if the Cable Formula is adopted by
8 the Commission and no delay in the effective date of such an adoption of the Cable Formula is
9 appropriate.

10 **Q. Why do you say there is no basis to believe, as Mr. Davis asserts, that adoption of**
11 **the Cable Formula as the unified pole attachment formula in New Hampshire would result**
12 **in a revenue shortfall for PSNH if adopted prior to the end of the Settlement Period?**

13 A. There are a number of reasons why Mr. Davis's assertion is unsupported. First, in Mr.
14 Davis's response to TWC-Comcast 006 he explains that the figure of \$1.89 million in total pole
15 attachment revenues included in the Company's revenue requirement underlying the Settlement
16 Agreement "was obtained from the Company's accounting records from January 1 to December
17 31, 2008," and was not subject to any "proforma adjustments" by the Company. As suggested
18 by this response, and confirmed by a comparison of the per-book and pro-forma revenues for
19 pole attachments as set forth in the COSS accompanying the Settlement Agreement (attached in
20 TWC/Reply Attachment PDK-2), the \$1.89 million pole attachment revenues projection was
21 based strictly on PSNH's 2008 accounting records without any forward looking adjustments.
22 Accordingly, the PSNH settlement pole attachment revenue figure does not take into account (1)

1 growth in the number of third-party pole attachments between 2008 and 2015, or (2) any
2 additional revenues from increases in rental rates charged by the Company or in make-ready or
3 other ancillary pole attachment related fees paid by third-party attachers over the Rate Settlement
4 period.

5 **Q. Is there reason to believe PSNH has experienced increases in total pole attachment-**
6 **related revenues since 2008 that would offset any potential decreases in the pole revenues**
7 **associated with adoption of the Cable Formula as a unified broadband rate?**

8 A. Yes, there is. According to PSNH, the Company has licensed an additional 31,769 pole
9 attachments in the years 2009 through the end of September 2012, and charged billable make-
10 ready on 661 poles. *See* PSNH's response to SEGTEL-013 reproduced in TWC/Comcast Reply
11 Attachment PDK-6. In addition to the revenues billed for the make-ready work, it is important to
12 note that PSNH, as pole owner, receives the benefit of the increased asset value of the poles
13 replaced in make-ready (paid for by the attacher) that are now part of PSNH's asset base.
14 Moreover, PSNH informed us in response to data requests that the rates charged for cable
15 attachments have increased 13.5% from \$8.87 in 2009 for an SO pole to \$10.07 in 2012. *See*
16 PSNH's response to SEGTEL-013 reproduced in TWC/Comcast Reply Attachment PDK-7.
17 Since PSNH's pole attachment rental rates in 2009 were virtually identical to its 2008 rental rates
18 (*see* TWC/Comcast Reply Attachment PDK-7), this percentage increase is representative of the
19 Rate Settlement period increase to date.

20 **Q. Have you undertaken a detailed analysis of the change in total pole attachment**
21 **rental revenues over the Rate Settlement period that PSNH would obtain from third party**

1 **attachers vis-à-vis the 2008 revenues incorporated in the Rate Settlement revenue**
2 **requirement if the Cable Formula was adopted as a unified broadband rate methodology?**

3 A. No, I have not. As noted earlier, PSNH did not respond to TWC-Comcast's data request
4 006 asking it to provide a detailed breakdown of the revenues comprising the pole attachment
5 revenues incorporated in the revenue requirement reflected over the Rate Settlement period by
6 component revenues, type of attachments, and attaching entity. Without this information, such
7 an analysis of the change in pole attachment revenues vis-à-vis the 2008 level (and hence the
8 impact on PSNH's Rate Settlement revenue requirements) cannot be made. I would add,
9 however, that PSNH recently agreed to provide additional responsive information to TWC-
10 Comcast 006 pertaining to the 2008 test year \$1.89 million pole revenues included in its COSS
11 in support of its Rate Settlement revenue requirement and I reserve the right to supplement this
12 reply testimony to the extent necessary based on such additional data.

13 That said, as mentioned above, given the significant growth in the number of third party
14 pole attachments since 2008, combined with the increase in pole attachment rates from 2008 to
15 the present time, it is unlikely that total pole attachment-related revenues for PSNH would
16 decline materially, if at all, from the 2008-based level reflected in the Settlement Agreement.
17 Moreover, particularly if make-ready and other ancillary pole attachment fees (*e.g.*, fees for
18 application processing, field surveys, inspections, and audits) charged third-party attachers were
19 taken into account, it is as likely, if not more so, that total pole attachment related revenues have
20 actually increased vis-à-vis 2008 levels. However, regardless of whether total pole attachment
21 revenues have increased or decreased compared to the 2008 amounts reflected in the Rate
22 Settlement revenue requirements, the impact on residential electric customers would be

1 miniscule, as the revenue impact analysis I provided in response to PSNH Data Request 12
2 demonstrates. *See* TWC/Comcast Reply Attachment PDK-8.

3 **Q. In his response to TWC-Comcast Data Request 011 (*see* TWC/Comcast Reply**
4 **Attachment PDK-9), Mr. Davis states that he disagrees with your impact analysis on**
5 **PSNH residential customers if the Cable Formula is adopted as the uniform attachment**
6 **rate in New Hampshire. What is your response to Mr. Davis’s criticism of the impact**
7 **analysis you provided in response to PSNH Data Request 12?**

8 A. Mr. Davis’s criticisms of the revenue impact analysis I performed in response to the
9 PSNH data request do not substantively refute my analyses in any way. First, Mr. Davis has
10 chosen not to provide any alternative revenue impact analysis of his own to directly refute mine,
11 notwithstanding the data request TWC-Comcast 011 which asked him to provide any such rate
12 impact analyses by PSNH, its experts, or its consultants, directly analogous to those requested of
13 me in PSNH Data Request 12 and to which I responded using the best information available to
14 me at the time. *See* TWC/Comcast Reply Attachment PDK-8. Mr. Davis also declined to
15 answer TWC-Comcast data requests 014 and 015 regarding the impact on PSNH customers (on a
16 cents per kilowatt hour basis) if a unified Cable Formula rate (or revised Telecom Formula rate)
17 were adopted in New Hampshire, asserting to do so would entail conducting an “allocated cost of
18 service study and comprehensive set of distributed test year revenue requirements.” *See* PSNH
19 responses to TWC-Comcast data requests 014 and 015 reproduced in TWC/Comcast Reply
20 Attachment PDK-10.

21 He similarly declined to respond to TWC-Comcast 012 (the PSNH response to which is
22 reproduced here as TWC/Comcast Reply Attachment PDK-11) asking him to state his agreement

1 or disagreement with my testimony that the price elasticity of demand for broadband services is
2 greater than that of PSNH's electric delivery service – a matter that directly pertains to the
3 question of impact of an increase in the pole rate on PSNH residential electric customers as
4 broadband customers. PSNH's response that the requested information on the price elasticity of
5 demand for broadband service as compared with PSNH's electric delivery service is “neither
6 relevant ...nor reasonably calculated to lead to the discovery of material and admissible
7 evidence” reflects an inherent lack of understanding on Mr. Davis's part of this most basic
8 economic concept. As discussed in my direct testimony (at p. 25), it is widely acknowledged that
9 the demand for electric distribution service is price inelastic (*i. e.*, not sensitive to changes in
10 price) such that even if it could be shown that rates for electric customers would increase (which
11 is unlikely), there would be little if any real impact on demand for elasticity, whereas the
12 converse is true for broadband service. In the case of broadband service, even relatively small
13 changes in price will have a significant dampening effect on service adoption rates (*see* Kravtin
14 Direct Testimony at 30).¹

15 Second, and perhaps most significantly, to the extent my analyses (again which were
16 based on inputs used in PSNH's own rate calculations) overstated total attachment revenue that
17 would be billed by the Company, the effect of any such overstatement would have been as much
18 to overstate the potential *positive* impact of PSNH's proposed rates (relative to my proposal for a
19 unified broadband rate set using the Cable Formula) on its own electric subscribers as it would
20 have been to overstate the negative impact of PSNH's proposed rates on broadband subscribers.

¹ See National Broadband Plan Connecting America Chapter 6 Infrastructure reproduced as TWC/Comcast Reply Attachment PDK-12.

1 In other words, Mr. Davis's criticisms that my rate impact analysis overstates the total pole
2 attachment revenues cuts against his own assertions of a significant revenue shortfall for the
3 Company that would need to be made up from increases in electric distribution rates. The
4 smaller the amount of potentially reduced levels of pole attachment revenues for PSNH that
5 would result from adopting a unified broadband rate using the Cable Formula rate, the smaller
6 any potential impact on PSNH's electric distribution customers.

7 **Q. You note above that the rate impact analyses you provided in response to PSNH**
8 **Data Request 12 were based on the average number of attaching entities figure PSNH used**
9 **in its own rate calculations filed with the Commission, which was the best information**
10 **available to you at the time of PSNH's request. Is there now better information available**
11 **to use?**

12 A. For this purpose, there is. In response to data requests, PSNH provided billing data
13 showing the number of invoiced third party attachments. See PSNH response to TWC-Comcast
14 057 reproduced in TWC/Comcast Reply Attachment PDK-13. While, as recognized by the FCC,
15 there are problems with relying on billing data for purposes of rebutting the FCC presumptive
16 number of attaching entities to be used in the FCC's Telecom Formula (as it excludes a
17 potentially significant number of non-billed attachments),² this data is appropriate for use in a
18 revenue impact analysis as it directly pertains to billable units. Now that PSNH has provided
19 this additional data, I have updated my revenue impact analyses to reflect the number of billed

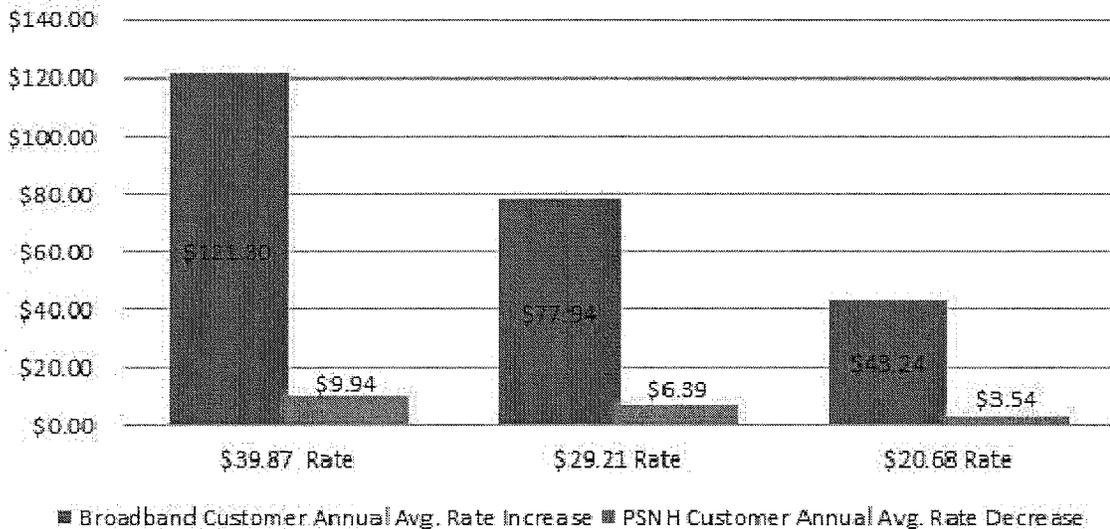
² *Teleport Communications Atlanta, Inc. v. Georgia Power Co.*, Order on Review, 17 FCC Rcd 19859 (2002) (rejecting "number that represents the number of 'paying attachments' without explaining how this number was derived. Georgia Power Company admits it does not include itself or government attachments in its count").

1 third party attachments identified by PSNH, disaggregated by fully owned and jointly owned
2 poles. *See* Figure 1 and my supporting work papers reproduced in TWC/Comcast Reply
3 Attachment PDK-14. I have also updated my analyses to reflect Mr. Davis's uniform pole rate
4 proposals, as identified in Tables 5 to 7 of Mr. Davis's testimony. *Id.*

5 **Q. What are the results of your updated revenue impact analyses?**

6 A. The results of my updated analyses are provided in Figure 1 on the following page
7 alongside those of my initial analysis provided in response to PSNH Data Request 12 (supporting
8 calculations are provided in TWC/Comcast Reply Attachment PDK-14). For the reasons
9 described above, Figure 1 below shows a smaller annual revenue impact of changes in pole
10 attachment methodology on residential electric distribution subscribers than did my original
11 analysis. Importantly, because the updated impact analyses show an even smaller impact on
12 PSNH's residential electric customers from PSNH's proposals to increase pole attachment rates
13 than the original, they serve to reinforce the points made in my direct testimony (*see* pages 25 -
14 26), namely that the negative economic impact of high pole attachment rates such as proposed by
15 PSNH for broadband service subscribers is magnified by the little to any offsetting value of those
16 higher rates for residential electricity subscribers (who are also subscribers of broadband, since
17 the impact of higher pole attachment rates on a per electric subscriber or per kilowatt hour basis
18 is very small in contrast to the relatively large impact per broadband subscriber).

Figure 1
Estimated Annual Rate Impact of PSNH's Higher Proposed Pole Attachment Rates *vis-a-vis* Cable Rate



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My updated analyses similarly confirm the significant negative impact on broadband subscribers of charging higher pole attachment rates – even under PSNH’s least aggressive alternative pricing proposal presented in Table 7 of Mr. Davis’s testimony (*i.e.*, a uniform pole rate of \$20.68), which is still more than double the \$10.07 rate I am recommending for the unified broadband rate based on the Cable Formula, although slightly below PSNH’s current communications rate of \$22.96 (based on the old Telecom Formula). Moreover, for the reasons mentioned above (and in my direct testimony at 25) regarding price elasticity of demand, these updated results, as with the original analyses, understate the true relative impact on broadband service subscribers versus electric distribution subscribers of higher pole attachment rates. This is because, as discussed above, the demand for, and hence adoption rates of, broadband services is very sensitive to price (*i.e.*, relatively price elastic), whereas the demand for electric

1 distribution is not (*i.e.*, price inelastic). Accordingly, the true economic impact on the underlying
2 demand for broadband (as measured by the percent change in quantity demanded of the service)
3 is even more magnified than the changes in rates shown in Figure 1 would suggest.

4 **Q. In the response referenced above (TWC-Comcast Data Request 011 reproduced in**
5 **TWC/Comcast Reply Attachment PDK-9), Mr. Davis states that it is not clear that the**
6 **nationwide figures from the National Broadband Report used in your impact analysis are**
7 **“representative of actual subscribers in New Hampshire or of the electric service customers**
8 **of PSNH.” How do you respond to his comments?**

9 A. First, I would note that Mr. Davis was specifically asked in this request to provide
10 PSNH’s own analysis of relative rate impacts analogous to that asked of me in PSNH Data
11 Request 12, and to provide any studies, reports, or analyses that support the use of input
12 assumptions that differ from those I used in my analysis. He declined to provide his own impact
13 analysis, stating that “[t]he Company has not performed such impact analysis,” or to provide any
14 alternative input assumptions to those I used to calculate the impact of a change in pole
15 attachment rate on the average broadband service. *See* PSNH response to TWC/Comcast data
16 request 011 reproduced as TWC/Comcast Reply Attachment PDK-9.

17 Second, because pole plant is homogenous in nature (or as more commonly said, “a pole
18 is a pole is a pole”), and the technology of pole installation very basic, there is no reason to
19 expect that such basic relationships concerning the average number of households/mile,
20 subscribers/mile, and poles per mile in New Hampshire would vary remarkably from the national
21 representative data identified in the National Broadband Report and upon which I relied to
22 perform my analysis. Again, Mr. Davis was given the opportunity to provide New Hampshire-

1 specific data for these inputs and declined to do so. More importantly, however, because the
2 potential relative impact on electric subscribers (*i.e.*, an electric rate reduction) from a change in
3 pole rental rates is so small relative to the impact on broadband subscribers (*i.e.*, a broadband
4 rate increase), it is very unlikely that any incremental changes to these inputs to reflect New
5 Hampshire specific data would have a material difference on the overall conclusions that I
6 reached.

7 **Q. In response to TWC-Comcast-013 (reproduced as TWC/Comcast Reply Attachment**
8 **PDK-15), Mr. Davis acknowledges the point you make in your direct testimony (at 24, 26)**
9 **that electric utility subscribers are also potential subscribers of broadband services - the**
10 **underpinning of your position that the benefits to electric subscribers from lower pole**
11 **attachment rates that would derive to them as users of broadband services are**
12 **appropriately taken into account. However, in his response, Mr. Davis appears to qualify**
13 **his acknowledgement of this key fact by noting that “the broadband service a potential**
14 **customer chooses may not be related to wire pole attachments in PSNH’s territory,” and**
15 **citing to service options available via satellite or wireless alternatives. Does the existence of**
16 **alternative delivery technologies affect the validity of your impact analysis?**

17 A. No, it does not. Indeed, one of the most compelling reasons behind the National
18 Broadband Report’s recommendation for a unified broadband pole attachment rate set at, or as
19 close as possible to, the rate produced using the Cable Formula was to encourage innovation and
20 competition for broadband services and to provide a level playing field among all competitors
21 and potential competitors across the spectrum of the increasingly convergent marketplace of

1 wired and wireless technologies.³ Mr. Davis may not be aware, but access to utility poles is also
2 used in the case of wireless technologies (and this is increasingly the case with newer micro-cell
3 technologies such as Distributed Antenna Service, which have both wired and wireless
4 components). Indeed, the FCC's April 7, 2011 Pole Rate Decision deals specifically with issues
5 surrounding wireless access to utility poles in order to ensure a more level playing field between
6 wired and wireless technologies.⁴

7 Moreover, whether or not some technologies exist that may not require access to utility
8 poles now or in the future (such as the satellite offerings identified by Mr. Davis in response to
9 TWC-Comcast Data Request 013), does not in any way diminish the importance of and
10 justification from an economic and public policy perspective of precluding a pole owning utility
11 from exploiting its monopoly control over a facility deemed essential to other providers using
12 other technologies or mixes of technology. For the reasons I discuss at pages 21-22 of my direct
13 testimony pertaining to Factor 2, the more competition that broadband pole attachers face, the
14 greater the harm in terms of lost economic efficiency and overall societal welfare that result from
15 allowing the monopoly pole owner to charge an excessive price vis-à-vis a competitive level
16 benchmark.⁵

17

³ As explained in my response to PSNH-PDK Data Request 005 (reproduced here as TWC/Comcast Reply Attachment PDK-16), establishing a unified broadband rate using the Cable Formula in the convergent marketplace is the correct policy regardless of whether the electric company has actually deployed competitive communications offerings. Mr. Fiore and Hodgedon further explain the highly competitive marketplace for voice, video and data services in response to PSNH-Comcast Data Request 015, reproduced here as TWC/Comcast Reply Attachment PDK-17.

⁴ *Implementation of Section 224 of the Act- A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 ¶¶ 74-77 (2011) ("April 7, 2011 Order").

⁵ See TWC Response to PSNH Data Request No. 007 reproduced here as TWC/Comcast Reply Attachment PDK-18.

1 **RECOVERY OF POLE COSTS AND SUBSIDY-RELATED ISSUES**

2 **Q. In Mr. Davis’s testimony at page 8, lines 2-4 and 8-10 he states that no costs**
3 **associated with the unusable space on a pole are included in the FCC Cable Formula. In**
4 **his responses to Data Requests 016 and 017 (reproduced here as TWC/Comcast Reply**
5 **Attachment PDK-19), Mr. Davis retracts his earlier testimony, admitting that “the costs**
6 **attributable to the unusable space are found within the overall calculation” under the**
7 **Cable Formula. Based on his discovery responses, is Mr. Davis’s understanding of the way**
8 **the Cable Formula works now correct?**

9 **A. With regard to the unusable space issue, yes. Mr. Davis’s responses to TWC-Comcast**
10 **Data Requests 016 and 017 correct a fundamental misstatement and/or misunderstanding of the**
11 **Cable Formula articulated in his testimony at page 8. The Cable Formula, as now acknowledged**
12 **by Mr. Davis, allocates the costs of the *entire* pole (including costs of unusable space) to third**
13 **party attachers. As explained in my initial direct testimony at 43, the Cable Formula’s use of a**
14 **proportional allocator (*i.e.*, based on the percent of usable space occupied by an attacher) to**
15 **attribute costs associated with the entire pole is directly analogous to how landlords charge**
16 **tenants for use of common space in an apartment building (*e.g.*, lobby, elevators, parking lots).**
17 **The type of method used to allocate costs should not be confused, as Mr. Davis originally did in**
18 **his testimony, with the universe of costs being allocated.**

19 However, while Mr. Davis has now corrected the fundamental misstatement or
20 misunderstanding of the Cable Formula articulated in his testimony, he nonetheless clings
21 mistakenly to the notion that the Cable Formula’s use of a proportional or relative use allocator
22 results in an under-allocation of the costs of the pole facility.

1 **Q. Please elaborate on Mr. Davis' mistaken notion of under-allocation or under-**
2 **recovery of costs under the FCC Cable Formula.**

3 A. In response to TWC-Comcast Data Requests 016, Mr. Davis states that although the
4 Cable Formula does in fact allocate costs for the entire pole to attachers within the space
5 allocation factor, he does not believe that "enough of these costs are being allocated to the
6 attacher via the space factor." This is consistent with assertions made in his testimony on pages
7 6 (lines 13-16) and 12 (lines 10-17) that the Cable Formula does not allow PSNH to recover its
8 pole costs associated with cable and CLEC pole attachments.

9 **Q. Do you agree with his assessment?**

10 A. No, I do not. I explain at length in my initial direct testimony (*see* discussion at pages 23
11 -25 and 41-45) the many reasons why the Cable Formula provides for more than full recovery of
12 the appropriate economic costs of third party- pole attachments. This is a point that also has
13 been recognized numerous times by the FCC and the courts, most recently in the FCC's April 7,
14 2011 pole rate decision.⁶ In alleging that an under-recovery of costs occurs under the Cable
15 Formula associated with the space factor – notwithstanding his acknowledgment that the space
16 factor does allocate costs associated with the entire pole inclusive of unusable space (*see* PSNH
17 Response to TWC-Comcast-016 and 017) and inclusive of the "safety"⁷ space (*see* Response to
18 TWC-Comcast-037 reproduced as TWC/Comcast Reply Attachment PDK-21) - Mr. Davis
19 presents no specific evidence in support of his claims. Rather, he presents undocumented and

⁶ These points are also addressed in my response to PSNH's Data Request 1, which is reproduced here as TWC/Comcast Reply Attachment PDK-20.

⁷ I disagree with Mr. Davis's characterization of this pole space as the "safety" space other than to note that it is space not occupied by communications attachers by virtue of the hazards created by PSNH's facilities. In my view the space is more appropriately and commonly referred to as the "neutral" space and this testimony will identify it as such.

1 unsupported assertions that the Company has invested in taller poles to accommodate third party
2 attachers for which the Company is not fully compensated, and has specifically reserved space
3 on its poles for third party attachments, including that related to the neutral space. These
4 allegations are invalid for the many reasons that I expand upon in more detail below addressing
5 Mr. Davis's subsidy arguments relating to taller poles and neutral space. There are two
6 overarching points I would make here, however, in regard to Mr. Davis's flawed assessment of
7 an under-allocation of costs under the Cable Formula.

8 First, in response to TWC-Comcast data requests, Mr. Davis has either recanted or
9 provided countervailing evidence that directly refute his allegations of an under-allocation of
10 costs under the Cable Formula. In particular, in response to TWC-Comcast 029 (reproduced
11 here as TWC/Comcast Reply Attachment PDK-22), Mr. Davis recants his former claim that the
12 Company installs taller poles to meet anticipated third party demand, acknowledging the
13 economic reality that "PSNH installs taller poles to meet the requirements of PSNH electric
14 customer demand and to accommodate a joint owner." He further acknowledges in response to
15 TWC-Comcast 030 (reproduced here as TWC/Comcast Reply Attachment PDK-23) that the
16 Company has performed no such study "demonstrating that PSNH's investment in taller poles
17 would not have been made 'but for' the communications attachers, excluding any joint owner."⁸
18 And, when asked to support his statement that space is specifically reserved for third parties, he

⁸ To this pivotal point, it is telling therefore that in response to TWC-Comcast 031 (see TWC/Comcast Reply Attachment PDK- 24), PSNH indicates it has no study that could separately quantify the additional investment in taller poles made in anticipation of third party communications attachers *that was not recovered in make ready fees*. Nor does PSNH have any study that identifies the additional investment required to accommodate third party attachers on a per pole or per attacher basis or any explanation regarding what data PSNH may have sampled to support Mr. Davis's claim (see Response to TWC-Comcast Data Request 032, TWC/Comcast Reply Attachment PDK- 25).

1 referenced his data response to segTEL concerning only the safety space. *See* PSNH Response
2 to TWC/Comcast PSNH 038 and Response to segTEL 009 reproduced as TWC/Comcast Reply
3 Attachment PDK-26). However, Mr. Davis admits that PSNH in fact has the ability to place a
4 variety of different kinds of attachments within the neutral space, thus contradicting his
5 testimony on page 10, lines 3-4 that the “safety space” (*i.e.* the neutral space) is “specifically
6 reserved” for third party attachers. *See* PSNH responses to TWC-Comcast 018 and 019
7 reproduced as TWC/Comcast Reply Attachment PDK-27). It is logically inconsistent to argue
8 that space is specifically reserved for third party communications attachments when in fact that
9 space can and is routinely used by the Company for attachments of its own and other entities,
10 such as municipal street lights. As illustrated in the photographs of PSNH poles attached to this
11 Reply Testimony in TWC/Comcast Reply Attachment PDK-28), PSNH does in fact routinely
12 install other facilities in the neutral space such as street lights, transformers and even its own (or
13 licensed) communications conductors⁹ thereby validating the approach of the Cable Formula to
14 treat the 40 inch neutral space as “usable” space under the formula.¹⁰

15 Aside from being unsupported and/or refuted by Mr. Davis’s discovery responses, a
16 second threshold point to make is that Mr. Davis’s contention that the pole costs associated with
17 third party attachers are under-recovered in the Cable Formula implicitly assumes a parity or

⁹ In the PSNH response to TWC-Comcast Data Request 19 (reproduced at PDK-27), PSNH suggests that its communications conductors are only installed in the communications space and not the neutral space. However, photographs of PSNH poles show that PSNH does allow communications fiber (owned or licensed) to be installed in the neutral space. *See* TWC/Comcast Reply Attachment PDK-28.

¹⁰ As clearly stated by the FCC, it is the “common practice of electric utility companies to make resourceful use of this safety space by mounting street light brackets, step-down distribution transformers, and grounded shielded power conductors therein...be[ing] of practical benefit to the electric utility.” *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, Mem. Op. and Second Report and Order, 72 F.C.C. 2d 59, 70-71 ¶ 24 (1979), *aff’d*, *Monongahela Power Co. v. FCC*, 655 F.2d 1254 (D.C. Cir. 1981).

1 equivalency in cost causation or cost burden of third party attachers and those of the pole owner.
2 Such an assumption is at odds with the economic reality of poles. There is a very important
3 distinction between pole owners and third party attachers - as mere licensees on the pole - that
4 Mr. Davis ignores.

5 Unlike pole owners, third party attachers do not play a role in the planning, control,
6 management and oversight of the utility pole network, including decisions as to what height
7 poles to install or where they should be installed. Nor do licensees have the ability that pole
8 owners have to place facilities where they wish on the pole (including within the neutral space).
9 As licensees, their occupancy of space on utility poles is subject to terms and conditions under
10 the control of the pole owner, which typically include the right of the owner to move, displace, or
11 even remove third party attachments (at the attacher's own expense) to meet the needs of the
12 owner. Third party attachers are subject to an application and permit process which involves
13 fees and proceed along timelines largely outside the attacher's control but that can involve
14 significant delays, or at minimum, do not afford close to the same level of accessibility as the
15 owner enjoys.

16 In addition, as discussed in my initial direct testimony (*see* pages 24-26), licensees are
17 subject to make-ready fees – over and above the rental rate – that are set to recover any out of
18 pocket costs incurred by the pole owner to accommodate the third party attachment, *including*
19 *the cost of installing a taller or stronger pole necessitated by the third party attachment.* For
20 these reasons, Mr. Davis's contention that third party attachers should bear additional cost
21 responsibility for decisions concerning the height of poles or the neutral space – decisions that
22 are made unilaterally and at the full discretion of the pole owner – simply does not reflect the

1 economic reality of poles or the inferior rights and privileges of third party licensees vis-à-vis
2 pole owners.

3 **Q. On pages 6-9 of his testimony, Mr. Davis asserts that the Cable Formula results in a**
4 **subsidy from electric ratepayers to cable and CLEC attachers in numerous respects.**
5 **Specifically, Mr. Davis states “the primary subsidy at issue with the FCC cable rate**
6 **methodology is the allocation of only ‘usable space’, which excludes and assigns to PSNH**
7 **and its electric customers a portion of space dedicated to users of the communications**
8 **space.” Mr. Davis testimony at 8. According to Mr. Davis’s testimony, “this dedicated**
9 **space includes the safety space [i.e., the neutral space], along with the communications**
10 **gain, which would not be needed, and therefore would not require PSNH to invest in a**
11 **taller pole but for the accommodation of pole attachments.” Do you agree with his**
12 **analysis?**

13 A. No, I do not. Mr. Davis’s erroneous claims of a subsidy from electric ratepayers to cable
14 hinge on the very same erroneous assertions by Mr. Davis that there is an under-recovery of
15 costs under the Cable Formula discussed above. As noted above, in his responses to
16 interrogatories, Mr. Davis has effectively retracted a number of key premises underlying the
17 subsidy/under-allocation arguments presented in his testimony concerning the installation of
18 taller poles and safety space for the benefit of third party attachers. Mr. Davis’s data responses
19 provide clear evidence to the contrary, *i.e.*, that the costs associated with this space are caused by
20 and hence properly attributed to the provision of the Company’s core electric distribution
21 business.

22 As further indicia that the Cable Formula does not result in under recovery of costs, it is

1 significant that Unitil Energy Services applies formulas for attachments that substantially follow
2 the FCC's Cable Formula and the new revised FCC Telecom Formula (that results in attachment
3 rates very close to the Cable Formula rate) as shown in Attachment 3 to my initial direct
4 testimony. Moreover, no other pole owner (except PSNH) in New Hampshire, including
5 FairPoint, has sought to impose a bifurcated rate structure for television, Internet and voice
6 services or a surcharge on attachments carrying voice services. *See* Pre-filed Testimony of Julie
7 P. Laine at 21 lines 21-23. It is difficult to give credence to PSNH's claims of under recovery of
8 costs in light of these facts and the fact that most of the 20 states that have certified to regulate
9 pole rates have adopted either the Cable Formula or a close variation thereof.¹¹ *See* PDK-UES 1
10 provided in TWC/Comcast Reply Attachment PDK-30.

11 **Q. Are there instances where third party attachers are the cost causers of pole space,**
12 ***i.e.*, but for the need to accommodate third party attachments, the Company could be using**
13 **shorter poles or would not have needed to replace poles prematurely or to make**
14 **rearrangements of existing wires on poles?**

15 A. Yes, there are. However, the costs of replacement and rearrangement attributable to third
16 party attachers *are already recoverable in full* in the make-ready charges that the Company can
17 and does charge third-party attachers. The payment of make-ready has historically been, and
18 remains a fundamental component of the FCC Cable Formula methodology. To ignore this
19 additional source of cost recovery to the Company is a major flaw in Mr. Davis's subsidy
20 argument. Indeed, it is a rather disingenuous omission in light of Mr. Davis's acknowledgment in

¹¹ As explained in my response to PSNH Data Request 8, application of the Cable Formula has proven over time to not affect the utilities' investment in pole plant. *See* TWC/Comcast Reply Attachment PDK-29.

1 response to TW-Comcast-039 (reproduced here as TWC/Comcast Reply Attachment PDK-31)
2 that “PSNH routinely charges a third party, including Time Warner and Comcast, to
3 accommodate a new attachment through the third party make-ready survey process and any
4 subsequent make-ready work required to accommodate such attachments.” In response to
5 segTEL-013 (*see* TWC/Comcast Reply Attachment PDK-6), the Company actually quantifies
6 “the total number of poles that were replaced as billable make-ready charged to a new attaching
7 entity or cost causer.” As shown in that response, the number of make-ready poles replaced at
8 third-party attacher expense between 2009 and the present has totaled close to 700 poles.

9 While Mr. Davis suggests in response to TW-Comcast 050 (*see* TWC/Comcast Reply
10 Attachment PDK-32) that there may be some incremental costs of adding pole plant for third
11 party use that are not paid for through make-ready charges, there is no valid economic or
12 regulatory basis for that to be so. Unlike the formula component of the FCC rate methodology,
13 the Company has control and discretion as to what is charged through the make-ready process.
14 Indeed, as found by the FCC in the April 7, 2011 Order, it would be contrary to the Company’s
15 fiduciary responsibility to invest its own capital on extra tall poles caused by third-parties (*i.e.*,
16 expenditures the Company would not have incurred absent the third-party). This is especially
17 the case given the Company has the right to avoid that expense by charging pole attachers for a
18 change-out. The FCC, in its thorough review of the record including voluminous pole owner
19 comments, further found that the pole owners could not support a finding that extra tall pole
20 investment occurred for the benefit of third party attachers.¹²

¹² April 7, 2011 Order at ¶ 144, n. 433 (“We agree with Pecaro, as explained below, that it would typically not be economically rational for utilities to build taller poles solely for the possibility of

1 As explained in my initial direct testimony (at 23-24), the well-established economic
2 standard for a subsidy-free rate (and the same principle applied under the legal standard of just
3 compensation) is the requirement that attachers be held responsible for the additional or
4 incremental costs they actually cause the pole owner to incur. If this condition is met, there can
5 be no valid claim that a subsidy exists. As I explain in detail in the cited pages of my direct
6 testimony, the economic reality of poles is that the Cable Formula, as a fully allocated cost
7 formula, and in combination with make-ready charges, provides the pole owner with cost
8 recovery well in excess of incremental costs. Not only can it be demonstrated the pole owner
9 and its ratepayers are “no worse off” (which is all that is needed to satisfy the economic and legal
10 standard of a subsidy-free rate), the benefits to the pole owner and its ratepayers of renting
11 otherwise vacant space on its poles results in them being made much better off than in the absence
12 of third party attachments.

13 As further evidence of this point, Mr. Davis admits in response to segTEL-6 that the
14 Company would not recognize cost savings related to unusable space in the absence of third
15 party attachments, which is a direct indication of the negligible, if any, incremental costs
16 associated with third-party attachments. *See* TWC/Comcast Reply Attachment PDK-33. When
17 this economic reality is combined with the fact that Company receives an ongoing rental rate
18 under the annual Cable Formula based on fully allocated costs (which by definition, and
19 confirmed by Mr. Davis’s response, far exceed any recurring incremental costs), *plus* full

accommodating attachers and therefore incur unreimbursed capital costs: “[I]n installing a pole that is taller than necessary is strictly speculative and contrary to efficient capital management. . . . Therefore, it would be wholly irrational for the utility, as well as inconsistent with a utility’s capital preservation obligations, to risk non-recovery of these costs absent a direct economic benefit.”)

1 recovery of non-recurring incremental costs through make-ready, the inescapable conclusion is
2 that there simply is no valid subsidy claim under these conditions.

3 The only thing that could be alleged as “under-recovered” by the Company - and
4 underlying its erroneous claims of subsidy under the Cable Formula- is lost monopoly rent, *i.e.*,
5 the ability of the monopoly pole owner to charge “what the market would bear.” In a monopoly
6 market, however, the price that the market would bear, in the absence of effective regulation, is
7 well in excess of a competitive or well-functioning market price. As found by the 11th Circuit
8 Court of Appeals, such monopoly rent is not properly considered as a cost that the pole owning
9 monopolist is entitled to recover.¹³

10 **Q. On page 12 (lines 15-16) Mr. Davis claims that PSNH has “financial and operational**
11 **costs” that it does not recover under the Cable Formula. Has PSNH provided any studies**
12 **isolating and quantifying the effect of third party attachment demand on PSNH operating**
13 **expenses, and what is your opinion as to whether PSNH experiences such unrecovered**
14 **operating costs?**

15 A. For the reasons discussed in the previous response, there is no valid basis to believe
16 PSNH experiences any unrecovered costs under the Cable Formula. As with his other claims,
17 Mr. Davis presents no studies isolating or quantifying the effect of third party attachment
18 demand on PSNH operating or capital expenses that would support his claim, including any
19 studies that would identify any operating costs “that would not have been made ‘but for’ the

¹³ See *Alabama Power Co. v. F.C.C.*, 311 F.3d 1357 at 1369 (“it would not make sense for the power companies to say, “Even though we are not out any more money that we were before the taking [of pole space at the regulated rate], we are missing out on the opportunity to sell to the [cable company] at what we deem the ‘full market price’ of this pole space.”)

1 communication attacher.” *See* PSNH Response to TW-Comcast-048, reproduced here as
2 TWC/Comcast Reply Attachment PDK-34.

3 In response to segTEL-01, Mr. Davis makes further unsupported and vague assertions of
4 possible unrecovered costs due to pole construction standards, and “depending on how the
5 Company books certain storm-related expenses, these costs may not be included in the pole
6 attachment calculations.” *See* TWC/Comcast Reply Attachment PDK-35. In addition to the fact
7 that Mr. Davis fails to provide any evidence to support these claims, there is little merit to them
8 in the first instance.

9 First, I address the issue of storm related expenses at length in the context of my
10 discussion of Unitil’s inappropriate adjustments to the formula for regulatory assets in my initial
11 direct testimony at 60-63. In that discussion, I identify the numerous reasons why the type of
12 extraordinary costs in question, from a cost causation perspective, are properly attributed to and
13 recovered by rates for core electric service and not from third party attachers, who must bear
14 their own storm related costs. I also explain how the inclusion of such expenses in the Cable
15 Formula rate is likely to result in an over-recovery of such costs, since these expenses typically
16 are amortized and there is no mechanism for a true-up between the Cable Formula rates and the
17 end of the amortization period set for recovery of qualified storm-related expenses.

18 Second, as to the point Mr. Davis raises in regard to the specificity of accounts included
19 in the Cable Formula, which he opines could serve to exclude certain costs incurred by the
20 Company related to poles, the Cable Formula works both ways. While the Cable Formula
21 methodology may exclude some accounts with a small amount of pole related costs, it also
22 includes accounts with portions of costs unrelated to poles. The FCC in developing and fine-

1 tuning its Cable Formula methodology over the years has sought to balance any gain from
2 additional precision with the cost and complexity of doing so.¹⁴ Thus, one cannot make a
3 legitimate claim of under-recovery merely by citing to some small amount of costs that may be
4 excluded from the formula “depending on how those costs are booked,” without also taking into
5 consideration the costs booked to accounts included in the formula that are unrelated to pole
6 attachments.

7 **Q. On page 7 of Mr. Davis’s testimony he asserts that “in the telecom methodology,**
8 **subsidies are included by using rebuttable presumptions instead of actual data,”**
9 **specifically referring to the actual number of attachments and the assignment of one third**
10 **of unusable pole space to PSNH. Do you agree that use of these FCC presumptions**
11 **constitute a “subsidy”?**

12 A. No, I do not. First, as a threshold matter, it makes no economic sense to talk in terms of a
13 “subsidy” when the rate is well in excess of incremental cost. As discussed, the Cable Formula
14 rate exceeds incremental cost, and the old Telecom Formula rate (using the FCC presumptive
15 values) is typically double or triple the Cable Formula rate. Accordingly, the old telecom rate
16 builds in a substantial amount of contribution in excess of economic cost, so that to suggest there
17 is a built-in subsidy in that rate again is a nonsensical argument from an economics perspective.

18 Second, the Telecom Formula’s 2/3 cost allocation factor applied to the unusable space
19 allocation factor (which results in an initial 1/3 share of cost recovery being assigned to PSNH as

¹⁴ *In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Recon., 16 FCC Rcd 12103 ¶ 128 (2001). (“Our inclusion of unrelated expenses in certain accounts and our exclusion of possible minor expenses in other accounts provides a balanced overall allocation of costs while avoiding a prolonged and contentious ratemaking process.”).

1 the pole owner), properly recognizes the pole owner's special rights, privileges, and cost
2 causation responsibility associated with that space. Indeed, even with that 1/3 cost assignment to
3 the pole owner, the assignment of cost responsibility to third party telecom attachers under the
4 old Telecom Formula is still double or even triple that of the Cable Formula rate, reflects an
5 economically appropriate allocation of costs consistent with cost-causation principles. By
6 contrast, the per capita allocation methodology embodied in the Telecom Formula rate, at least
7 for the range of attaching entities embodied in the FCC presumptions (*i.e.*, 3 or 5 attaching
8 entities, or even lower number if using "actual" data provided by the pole owner), assigns more
9 than a cost causative share of costs.

10 In this context, the 2/3 factor built into the old Telecom Formula, analogous to the .66
11 and .44 cost factors built into the revised (and now current) Telecom Formula for urbanized and
12 non-urbanized areas respectively, serves to reduce the inherent *over recovery* of costs resulting
13 from the Telecom Formula's use of a per capita space allocator applied to an already fully
14 allocated cost methodology (which by definition exceeds incremental or cost causative costs) to
15 a level more approximating the Cable Formula rate. In this context, Mr. Davis's criticisms of the
16 revised, current version of the Telecom Formula as expressed on pages 11- 12 of his testimony
17 are similarly without merit in that they are based on the same flawed myth that current FCC rate
18 formulas result in subsidies of communications attachments by electric customers – a myth that
19 flies in the face of economic reality. On one point, Mr. Davis and I agree, however, namely that
20 the revised Telecom Formula was specifically designed by the FCC, consistent with the
21 limitations imposed by the language of Section 224(e), to bring cable and telecom rates into
22 harmony at the level of the Cable Formula rate. Indeed, this is one of the reasons I do not

1 recommend that the Commission adopt the revised Telecom Formula rate as the unified
2 broadband rate. It offers no real benefit over the Cable Formula, but is more complicated to
3 administer and will result in more controversies among pole owners and attachers. Where he and
4 I strongly disagree, however, is with the notion that the Cable Formula, and by extension, the
5 revised Telecom Formula, in his words somehow “avoids responsibility for pole costs associated
6 with the unusable space and the safety space.” The total fallacy of this notion has been fully
7 addressed in my previous answers.

8 **Q. What about PSNH’s arguments regarding the use of the FCC’s presumptive**
9 **average number of attaching entities that is higher than the purported actual number?**

10 A. For the same reasons explained in the preceding answer, while it is possible that the
11 FCC’s presumptive number of attaching entities may exceed the actual number in a given
12 jurisdiction for a particular pole on which particular third party entities are attached (after all it is
13 a rebuttable presumption), it makes no sense to talk in terms of that constituting a source of
14 “subsidy.” Pursuant to the FCC’s rules, any party to a pole rate dispute may offer up its own
15 figure for the average number of attaching entities on the poles occupied by the attacher to use in
16 lieu of the FCC presumptions.

17 That said, the FCC has set very specific guidelines for any such figure so as to protect the
18 integrity of the formula. The number of attaching entities input can have a significant effect on
19 the rate result, and it is one of the few inputs that is not directly taken from publically reported
20 FERC Form 1 data. Accordingly, there is the incentive, particularly on the part of the pole owner
21 to understate this figure so as to justify a higher rate.

22 For this reason, in order to rebut the attaching entity presumptions, the FCC requires that

1 a pole owner determine the number of attaching entities in areas specific to each attacher.¹⁵ This
2 would normally entail conducting a full physical inventory or audit of utility poles in areas
3 specific to each attacher, or alternatively to conduct a statistically significant sample of poles in
4 areas specific to each attacher.¹⁶ The FCC specifically does not allow the use of attaching entities
5 figure based on billing data, such as provided by PSNH in response to TW-Comcast-057 and
6 relied on by Mr. Davis in at least one of his alternative rate proposals. *See* TWC/Comcast Reply
7 Attachment PDK-12. As found by the FCC, billing data is not a reliable or accurate source of
8 the average number of attaching entities for many reasons, including the exclusion of unbilled
9 attachments (*e.g.*, municipal attachments for which the Company does not bill),¹⁷ and the
10 inability to determine from billing records alone specific data as to which and how many third
11 party attachments are on the relevant subset of poles applicable to a particular attacher.

12

13 **PSNH'S ALTERNATIVE PROPOSED POLE RENT FORMULA METHODOLOGIES**

14 **Q. On pages 14 through 16 of his testimony, Mr. Davis explains what changes PSNH**
15 **proposes to the Cable Formula and the recently rejected FCC Telecom Formula (which he**
16 **incorrectly refers to as the “currently applied” methodology), in the event those formulas**

¹⁵ *Teleport* ¶ 25 (“[F]or example, an attacher is only responsible to pay its Telecom Formula share of the costs of unusable space for the poles to which it is actually attached...In order to be a reasonable reflection of the actual poles to which an attacher is affixed, the average must reflect only those poles in areas where the attacher is actually affixed.”)

¹⁶ Consolidated Order on Recon. at ¶ 70 (“As with all of our presumptions, either party may rebut this presumption with a statistically valid survey or actual data”); *Teleport v. Georgia Power*, at ¶¶ 25-26 (rejecting Georgia Power Company attaching entity “actual data” as unreliable noting that a study based only on “paying attachments” is insufficient.”).

¹⁷ *See* segTEL’s response to PSNH Data Request 4 (reproduced here as TWC/Comcast Reply Attachment PDK-36) in which segTEL notes that there are numerous municipal and other attachers on PSNH’s poles that do not pay attachment rental. These non-paying attachers would not be included in PSNH billing records.

1 are adopted by the Commission in this proceeding. For the Cable Formula, PSNH
2 proposes adjustments to the pole height, unusable space and usable space presumptions
3 based upon regulatory decisions in Connecticut. Specifically, at page 14 of his testimony,
4 Mr. Davis asserts that the Cable Formula space factor should be 1/12.33 instead of 1/13.5,
5 based on a pole height of 40 feet and unusable space of 27.67 feet (6 feet below grade plus
6 21.67 feet above ground clearances) based on a single 1993 decision in Connecticut. Do you
7 agree with PSNH's proposal to adopt these revised presumptions?

8 A. No, I do not. As discussed above in the context of the Company's proposed use of an
9 average attaching entity figure different from the FCC's Telecom Formula presumptions, the
10 FCC presumptive values relating to pole height, unusable and usable space are rebuttable
11 presumptions. As such, PSNH certainly has the opportunity to propose figures that differ from
12 the FCC presumptions. That said, as with the average attaching entity presumption, in order to
13 preserve the integrity of the formula approach, the use of numbers other than the presumptive
14 values (which are widely used and commonly accepted as representative of utility data
15 nationwide) must be based on actual data based on a full inventory or a statistically significant
16 sampling of the utility's poles and determined for areas specific to each attacher.

17 In this instance, Mr. Davis admits in response to TW-Comcast-033 (reproduced as
18 TWC/Comcast Reply Attachment PDK-37) that "[n]o study exists" that would "demonstrate that
19 the terrain in New Hampshire requires installation by PSNH of poles taller than the FCC's
20 presumptive 37.5 foot average height to maintain required clearances. There is simply no
21 credible basis for Mr. Davis to ask this Commission to substitute figures specific to a utility
22 operating in Connecticut in lieu of the FCC presumptive values or values based on actual poles

1 occupied by specific attachers and conditions in the state of New Hampshire. It is nothing more
2 than a thinly veiled attempt to manipulate the formula in order to produce a higher rate.

3 **Q. On page 14, Mr. Davis also suggests that the Commission adopt the Connecticut**
4 **formula approach of weighting the marginal cost of a taller 40-foot pole into the pole**
5 **investment data for the cable pole formula. Do you agree with this approach?**

6 A. No, I do not. As with the space presumptions, Mr. Davis offers no data or support with
7 respect to its pole investment in New Hampshire that would justify use of this approach in New
8 Hampshire, instead relying on the one 1993 Connecticut decision as the “origin of the 10%/90%”
9 factor. *See* Response to TW-Comcast 053 (reproduced here as TWC/Comcast Reply Attachment
10 PDK-38). Mr. Davis refers generally to the “significant number of new poles installed and
11 included in the Company’s pole plant records, and that are greater than the presumptive lengths,”
12 but even assuming these facts to be true, they are only applicable in relation to PSNH’s electric
13 distribution service. Mr. Davis provides no cost causal linkage to third party attachments that
14 would warrant the inclusion of marginal costs, which are measured here to be (to the best of my
15 knowledge) as current or replacement cost data (although Mr. Davis does not provide specific
16 sources or supporting documentation for his marginal cost figures).

17 In addition to lack of supporting documentation for New Hampshire, there is an even
18 more fundamental problem with the use of any kind of replacement cost figure in the pole rate
19 formula. The use of a replacement cost standard has been rejected repeatedly by the FCC and by
20 the Courts on many grounds including: the absence of a competitive market for poles to drive
21 down costs to competitive levels, the long-lives and slow rate of obsolescence for poles
22 rendering replacement costs largely irrelevant vis-à-vis embedded costs for this type of asset, the

1 fact that pole attachment rates do not guide optimal pole investment decisions by the pole owner,
2 the fact that pole owners receive full cost recovery for the relatively few poles on average that
3 are replaced each year, and most importantly, from a cost causation perspective, the fact that
4 make-ready charges *already* cover the true marginal cost of replacement on an individual pole
5 and individual attacher basis. Given the existence of make-ready charges, building in a higher
6 replacement cost in the rental formula, at any level, provides for a double recovery of cost for the
7 pole owner (and a double charge for the attaching entity).¹⁸

8 **Q. Do you have any other concerns with Mr. Davis's proposed use of a replacement**
9 **cost component in the calculation of net bare pole cost in the Cable Formula?**

10 A. Yes, I do. While of a lesser nature than the threshold problems with this approach
11 described in the preceding answer, there are problems with the manner in which Mr. Davis
12 calculates the marginal cost of a pole as presented in his attachment 1 to PSNH Response to TW-
13 Comcast-055 (reproduced here as TWC/Comcast Reply Attachment PDK-39). Mr. Davis's
14 calculation of the marginal cost of an average pole is based on fully owned poles. This is a
15 problem because it excludes the universe of jointly owned poles on which the overwhelmingly
16 majority of third party attachments are placed, and in addition may have a lower average cost
17 basis. According to data presented by PSNH in Response to TW-Comcast-057, about 95% of
18 third party attachments are on jointly-owned poles. *See* TWC/Comcast Reply Attachment PDK-
19 13.

20 **Q. On page 15 of his testimony, Mr. Davis proposes that if the rejected FCC Telecom**
21 **Formula were adopted by the Commission as a separate rate for CLEC attachers, that the**

¹⁸ *See, e.g., Teleport* note 15.

1 **2/3 factor be eliminated from the formula to increase the allocation of unusable space costs**
2 **assigned to communications attachers in order to “reduce subsidies in the telecom rate.”**

3 **Do you agree with Mr. Davis’s proposed revision to the old Telecom Formula.**

4 A. No, I do not. I address the numerous fallacies in Mr. Davis’s arguments against the
5 inclusion of the 2/3 factor in the rejected FCC Telecom Formula and his assertions of subsidy in
6 the FCC formula rates earlier in this testimony.

7

8 **Q. On pages 16 – 17 of his testimony, Mr. Davis proposes that the Commission adopt a**
9 **uniform pole rate methodology based upon the rejected FCC Telecom Formula that PSNH**
10 **now uses for CLEC attachers, subject to two adjustments: The first adjustment is to use**
11 **PSNH’s internally generated figure for average attaching entities per pole (which PSNH**
12 **reports as 2.4) instead of the FCC’s presumptions of 3 attaching entities in non-urban areas**
13 **and 5 attaching entities in urban areas. The second adjustment is to eliminate the 2/3**
14 **factor from the formula as described previously. What is your assessment of PSNH’s**
15 **proposed uniform pole rate as proposed by Mr. Davis?**

16 A. I strongly disagree with PSNH’s uniform rate proposal. It is at direct odds with the
17 objectives of effective pole rate regulation historically and the specific criteria adopted here in
18 New Hampshire. The old Telecom Rate was abandoned by the FCC because of the high rates it
19 produced relative to appropriate cost-causative recovery and its deleterious impact on broadband
20 competition and service deployment. With the two changes proposed by Mr. Davis, PSNH’s
21 proposed uniform rate would be \$39.87. This proposed rate is some 74% higher than the
22 unadjusted old Telecom Rate of \$22.96 identified in PSNH’s June 8, 2012 rate calculation filing.

1 Even more troubling, PSNH's proposed uniform broadband rate of \$39.87 is nearly four times
2 (300%) higher than PSNH's current cable rate of \$10.05, and close to six times higher than the
3 national average cable rate of \$7.00 – a rate repeatedly found to be just and reasonable and more
4 than fully compensatory to the pole owner by the FCC and the courts and a rate that best
5 promotes the goal of increased broadband competition and service deployment.¹⁹

6 **Q. Has PSNH provided any data or other support for its proposed “actual” average**
7 **number of attaching entities figure of 2.4?**

8 A. PSNH provided a derivation of this figure in its Response to TW-Comcast-057 (*see*
9 TWC/Comcast Reply Attachment PDK-13), however, the manner in which PSNH derived that
10 figure does not hold up to the standards established by the FCC. *See* PDK Reply Testimony at
11 31-32.

12 PSNH was given the opportunity to clarify which attachments were intended for
13 inclusion in its count of the number of attachments reflected in the 2.4 figure, but declined to do
14 so. In his response to segTEL Data Request-014 (reproduced here as TWC/Comcast Reply
15 Attachment PDK-41), Mr. Davis responds only very vaguely that the figure of “total attachers”
16 identified in his testimony “is intended to include all billed pole attachments” without addressing
17 the specific question posed in the data request, which was whether the “total attachers” figure
18 was intended to include “ILEC, CLEC, CATV, wireless, dark fiber, private entity, municipal,
19 traffic control, any attachers that attach in the power space, as well as any other attachers in its

¹⁹ In their direct testimony, Glenn Fiore and Chris Hodgdon describe the aggressive deployment of new broadband services by Comcast in New Hampshire that have been facilitated under Cable Formula rates. *See* PSNH Data Request to Comcast 010 reproduced here as TWC/Comcast Reply Attachment PDK-40.

1 records, and in its proposal” – billable or not.

2 **Q. Has PSNH provided any data to identify the average number of attaching entities**
3 **that are present (including itself and the ILEC for a jointly owned pole) on poles occupied**
4 **by Comcast and Time Warner Cable separately?**

5 A. No, and it states that it does not have the information required to do so. *See* PSNH
6 Response to TWC-Comcast -047 reproduced here as TWC/Comcast Reply Attachment PDK-42.

7 **Q. Have you calculated the resulting impact on Time Warner Cable and Comcast**
8 **average broadband subscriber if the PSNH proposal were adopted and pole rates were**
9 **increased to \$39.87 per fully owned pole (\$19.94 on a jointly-owned pole) from their**
10 **present level of \$10.05 (\$5.03 on a jointly-owned pole)?**

11 A. Yes, I have. The results of my analysis are presented in Figure 1 on page 14 above, with
12 supporting calculations presented in see TWC/Comcast Reply Attachment PDK-14. As shown
13 there, the impact on the average cable broadband subscriber would be upwards of \$120 per year
14 weighted for sole and jointly-owned poles (*i.e.*, calculated on a weighted basis using the
15 percentage of sole and jointly-owned poles on which third party entities in the aggregate are
16 attached). On a sole-owned pole, where the attacher bears the full brunt of the monopoly level
17 rate increase, the rate impact almost doubles to \$232 per year; although even for an attacher
18 located only on jointly-owned poles, its subscribers would feel a rate impact of \$116 (*see* Figure
19 1 and PDK-14). By contrast, my analysis shows that at most, the average electricity subscriber
20 would see a corresponding reduction in their bill of under \$10 a year, or \$0.00133 per kilowatt
21 hour of electricity.

22 **Q. In your opinion, what would the effect be on broadband deployment in New**

1 **Hampshire if the Commission were to adopt the PSNH proposal to quadruple the pole rent**
2 **payments made by cable and CLEC attachers to New Hampshire pole owners?**

3 A. Given the price sensitivity of broadband services, and based upon the analyses of
4 broadband service demand presented in the recent FCC pole rate proceeding and earlier National
5 Broadband Report with which I am familiar, this magnitude of price increase would likely have a
6 serious negative impact on broadband service adoption rates in the state. Moreover, given the
7 inelastic demand for electricity service, and the very small impact on the rates for electricity
8 service of a pole rate increase, even of this magnitude, there would be very little to any offsetting
9 positive impact on PSNH's electric subscribers, who are also subscribers of broadband services.

10 **Q. Has PSNH provided any support for its prediction that the average number of**
11 **attaching entities on its poles would increase "over some period of time" from 2.4 to 3.4**
12 **with pole attachment rates set at \$39.87?**

13 A. No, it has not. Nor do I believe that it would happen. The economic logic underlying
14 PSNH's prediction is backwards. Pole attachments are a vital input to broadband providers,
15 which is why the FCC has put so much emphasis on them and other vital infrastructure in the
16 National Broadband Report. Basic economic principles of supply and demand dictate that the
17 higher the price that must be paid for an input, especially a vital component of a firm's cost
18 function, all else being equal, will reduce that firm's demand for the input— not increase it.
19 These basic economic principles led the FCC to abandon the old Telecom Formula and to
20 embrace a new one that generally results in Cable Formula rates in order to better achieve the
21 national policy goal of increased broadband competition and service adoption. As mentioned
22 earlier, PSNH's proposed uniform broadband rate of \$39.87 is almost 6 times the national

1 average cable rate of \$7, and well over double the national average (old) Telecom Formula rate –
2 the latter having been found by the FCC to dampen investment in broadband services and the
3 roll-out of broadband services, especially in more rural areas.²⁰

4 In light of basic economic principles, and the magnitude of PSNH’s proposed rate
5 relative to the Cable Formula rate and the old Telecom Formula rate, PSNH’s suggestion that the
6 number of attaching entities in New Hampshire on PSNH pole is likely to grow to 3.4 “over
7 some period of time” of his testimony, thereby having the effect of reducing pole attachment
8 rates under the proposed methodology to “just” \$29.21 is totally illogical and unrealistic.

9 Moreover, even the “lower” rate of \$29.21 is still many multiples of a rate level that
10 would be likely to have the desired impact of stimulating competitive entry into the broadband
11 market and increased demand for pole attachments. Moreover, as shown in Figure 1 and in more
12 detail in *see* TWC/Comcast Reply Attachment PDK-14, the rate impact on the average
13 broadband subscriber of an increase of this magnitude is still substantial: \$78 calculated on a
14 weighted basis using the percentage of sole and jointly-owned poles on which third party entities
15 in the aggregate are attached, \$149 annually for sole owned poles, and \$75 annually for jointly-
16 owned poles.

17 **Q. How does PSNH’s proposed uniform rate of \$39.87 or even the “lower” \$29.21**
18 **uniform rate stack up against pole rates in other certified states?**

19 A. Rate levels of this magnitude would represent an extreme outlier among states certified to
20 set pole attachment rates – where the vast majority apply the Cable Formula (or some close

²⁰ See the response of Julie Laine to PSNH Data Request 8 with respect to these issues. TWC/Comcast Reply Attachment PDK-43.

1 variation of it) to all third-party attachments.²¹ Of particular significance, is that rate levels of
2 this magnitude would stand in stark contrast to pole rates in effect in the neighboring state of
3 Massachusetts with which New Hampshire competes for economic development capital and
4 skilled labor (for which broadband service availability and adoption rates are a vital component
5 of a state's ability to compete).²²

6 **Q. On page 17 of his testimony, Mr. Davis provides an alternative pole rate**
7 **methodology that consists of using the FCC's recently rejected Telecom Formula**
8 **(including the current FCC presumptions for pole height, unusable and usable space and**
9 **the 2/3 unusable space allocation), but applying the "actual number of attaching entities"**
10 **and "setting the rate on the basis of the actual attachments using communications space."**
11 **Mr. Davis suggests that using the "actual number of attaching entities" in the recently**
12 **rejected FCC Telecom Formula will "further maintain the dynamic nature of the design by**
13 **which greater deployments of broadband and other services via increased numbers of**
14 **attachments would lower the rate." Do you agree with his assessment?**

15 A. No, I do not. As shown in Figure 1, Mr. Davis's alternative proposal which produces a
16 uniform pole rate of \$20.68 represents a substantial mark-up (over 100%) over the just and
17 reasonable cable rate of \$10.05, and would have a large negative impact of over \$80 a year on
18 the average broadband subscriber. As with the other two rate scenarios "put on the table" by Mr.
19 Davis, there is little to no offsetting benefit to the average electric subscriber. The notion that

²¹ A summary of these states is provided in my response to Unital's Data Request 1. See TWC/Comcast Reply Attachment PDK-29.

²² Comcast explains the relevance of increases in pole costs in decisions about where to invest capital to expand its network in response to PSNH-Comcast Data Request No. 30. See TWC/Comcast Reply Attachment PDK-44.

1 rates as high as \$20 – double that of the Cable Formula and the revised FCC Telecom Rate –
2 would “maintain the dynamic nature” of the broadband market and encourage “greater
3 deployments of broadband” flies in the face of basic economic principles, sound public policy,
4 and the six factor test set forth in NH 1304.06.

5 **CONCLUSION**

6 **Q. Could you summarize Mr. Davis’ proposals for a unified pole rent rate and your**
7 **opinions as to whether they are consistent with the six-factor test in PUC 1304.06(a)?**

8 A. Mr. Davis proposes two alternative uniform methodologies for calculating pole rents in
9 New Hampshire. The first proposal would quadruple the average pole rent paid by Comcast and
10 Time Warner to \$39.87, or possibly “only” triple it to \$29.21 if a higher number of attaching
11 entities is used in the formula – although as explained in this testimony, there is no reason to
12 expect a higher number of attachers would result under the Company’s excessive pole
13 attachment rates. Indeed, rate levels of these magnitudes represent significant increase even with
14 respect to the old Telecom Formula – a rate abandoned by the FCC for being too high a rate
15 relative to the Cable Formula which the FCC and the vast majority of certified states have found
16 to be a just and reasonable rate best suited to promote broadband competition and service
17 deployment. Even Mr. Davis’s second alternative proposal would double the pole rent paid for
18 cable operators from \$10.05 to \$20.68.

19

1 Mr. Davis's proposed methodologies, in all of their incarnations, are totally inconsistent
2 with the six-factor test in PUC 1304.06(a) in that they:

- 3 • are markedly out of line with the vast majority of federal and state rules and policies
4 governing pole attachment rates;
- 5 • would have significant negative consequences on competitive alternatives; they would
6 serve at best only the very limited pecuniary interest of the pole owner;
- 7 • would have an overall negative impact on its electric customers given the negligible
8 positive impact on their electric rates would be more than offset by the negative impacts
9 on broadband competition and service deployment they would experience as consumers
10 of broadband; and finally;
- 11 • would result in a large rate shock and increasing divergence from the true economic cost
12 of pole attachments; and
- 13 • would have a very repressive effect on the broadband services market, in direct
14 contravention of key state goals to encourage broadband competition and service
15 deployment.

16 By contrast, and for the multitude of economic and public policy rationales presented in
17 my direct testimony and in this reply, a unified pole attachment rate set using the FCC's Cable
18 Formula best accomplishes the objectives of 1304.06(a).

19 **Q. Ms. Kravtin, does this conclude your testimony.**

20 A. Yes, it does. I would add, however, that PSNH recently agreed to provide additional
21 responsive information to TWC-Comcast 006 pertaining to the 2008 test year \$1.89 million pole
22 revenues included in its COSS in support of its Rate Settlement revenue requirement. PSNH

1 provided some clarifying information in a call that took place with TWC and Comcast counsel
2 the evening before this testimony was due (on October 30, 2012). PSNH also committed to
3 provide additional information. I have attempted to address this subject area in my testimony but
4 given the short time frame available to me and the additional forthcoming information, I would
5 like to reserve the right to amend this reply testimony to incorporate this additional information
6 if necessary.

7
8