

**STATE OF NEW HAMPSHIRE**

**Before the**

**PUBLIC UTILITIES COMMISSION**

**DT 20-111**

**COMCAST OF MAINE/NEW HAMPSHIRE, INC.**

**Petition for Resolution of Dispute and Declaratory Ruling**

**SUPPLEMENT TO PETITION**  
**and**  
**NOTICE OF RECENT FCC RULING**

NOW COMES Comcast Maine/New Hampshire, Inc. (“Comcast”) and hereby supplements its Petition for Resolution of Dispute and Declaratory Ruling (“Petition”) filed July 13, 2020 in the above-captioned proceeding. In addition, Comcast hereby provides notice to the New Hampshire Public Utilities Commission (“NH PUC” or “the Commission”) of relevant and instructive authority issued by the Federal Communications Commission (“FCC”) July 29, 2020 in *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, by stating as follows:

1. Comcast’s Petition seeks resolution of a pole attachment dispute with Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications-NNE (“Consolidated”). In addition, the Petition requests that the Commission issue a declaratory ruling that Consolidated’s denial of riser access in the absence of specified capacity, safety, reliability, or engineering issues, and Consolidated’s policy of insisting upon ownership and control of conduit between risers attached to its poles, constitutes unjust, unreasonable, and anti-competitive

pole attachment terms and conditions in violation of NH RSA 374:34-a and the Commission's pole attachment rules, N.H. Admin. R. Puc 1300.

2. Citing N.H. Admin. R. 1303.01 (b) and NH RSA 374:34-a, VI, Paragraph 39 of the Petition notes that the grounds for denying pole access are limited to insufficient capacity on the pole, "and for reasons of safety, reliability, and general applicable engineering purposes **with respect to the specific poles in issue.**"<sup>1</sup> (Emphasis added.) The Petition also avers that a pole owner's denial of access must be specific, and must "include all relevant evidence and information supporting its denial." Petition, para. 40. The pole owner must also "explain how such evidence and information represent grounds for denial as specified in Puc 1303.01." *Id.*
3. The Petition asserts that "Consolidated has provided no legitimate justification to deny Comcast's application to install its risers at these specific poles." Petition, para. 44. The Petition further states that Consolidated's reason for refusing to allow Comcast to install risers "is hypothetical and speculative". Petition, para. 45.
4. In addition to Consolidated's failure to provide fact-specific reasons for denying Comcast's request for riser access to the two poles in question, Consolidated cited its "policy [that] prohibits Comcast from installing conduit between two Consolidated pole assets." Petition, para. 16.
5. After Comcast filed its Petition with this Commission, the Federal Communications Commission ("FCC") issued a declaratory ruling clarifying that a utility's "blanket ban" ... on attachments to any portion of a utility pole is inconsistent with the

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<sup>1</sup> Another ground for pole access denial is if the pole owner does not possess the authority to allow the proposed attachment, a situation that does not exist in this case. See N.H. Admin. R. Puc 1303.01(b)(3).

federal requirement that a ‘denial of access...be specific’ to a particular request...”. *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, DA 20-796 (July 29, 2020), pp. 1-2. The FCC held that “utilities may not impose categorical bans on pole access that do not require the utility to provide a reason for denying access specific to the pole or attachment in question.” *Id.*, p. 2. Denials “must state the ‘precise concerns’ regarding the ‘particular attachment(s) and the particular pole(s) at issue.’” (Citation omitted) *Id.*, p. 4. The FCC further held that although utilities may rely on construction standards, and state and national standards, pole attachment denials must be “based on actual (not theoretical) safety, reliability, capacity, or engineering grounds.” *Id.*, p. 7. A “mere citation or reference to a construction standard to justify a denial of access is insufficient to comply with [47 CFR] section 1.1403(b).” *Id.*, p. 8.

6. Notwithstanding that New Hampshire pole attachment requests and disputes are subject to this Commission’s jurisdiction,<sup>2</sup> the FCC’s declaratory ruling is nonetheless instructive given the similarity between the FCC’s rules regarding pole attachment denials and the Commission’s rules on the same topic. More specifically, the FCC’s rules state that “a utility’s **denial of access shall be specific**, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.”(Emphasis added.) 47 CFR

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<sup>2</sup> The NH PUC’s jurisdiction over pole attachments was established pursuant to 47 U.S.C. §224(c) upon this Commission’s certification to the FCC that appropriate rules implementing the NH PUC’s regulatory authority over pole attachments were effective. *See New Hampshire Joins States That Have Certified That They Regulate Pole Attachments*, 23 FCC Rcd 2796 (released February 22, 2008).

§1.1403 (b). The Commission’s nearly identical denial rule states that a “pole owner’s **denial of access shall be specific**, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information represent grounds for denial as specified in Puc 1303.01.” (Emphasis added.) N.H. Admin. R. Puc 1303.04(c). The “grounds for denial” specified in Puc 1303.01(b) are: 1) insufficient capacity on the pole; 2) for reasons of safety, reliability, or generally applicable engineering purposes; and 3) the pole owner does not have the authority to allow the proposed attachment.

7. Consolidated’s letter denying Comcast’s riser request fails to meet the specificity standard required by both the federal and state pole attachment denial rules. The denial letter states “Consolidated denied the riser licenses on each riser pole based on capacity and engineering standards.” Petition, Attachment 9, p. 1. However, the denial letter is devoid of any specific information regarding the affected poles’ actual capacity to physically accommodate risers. It also fails to cite the specific engineering standards upon which Consolidated relies, and does not explain why the requested risers (and their associated guards) are inconsistent with those standards. Instead, the denial letter is couched in general terms that do not address the actual capacity, safety or reliability of the poles in question, or any specific engineering standards that would not be met if risers were to be installed on the poles in question. Consolidated’s denial letter merely states that Consolidated “implements policies that will allow for structural integrity and efficient use” of its pole, and that the denial of riser access to Consolidated’s poles “is an example of just such a practice.” *Id.*

8. Consolidated's denial letter also articulates Consolidated's blanket policy of not licensing risers for privately-owned conduit between Consolidated's poles. The stated purpose of this policy is to prevent "premature exhaustion" of underground and pole space. *Id.* However, nothing in the letter explains why the requested risers, or Comcast's proposed conduit between those risers, would actually exhaust pole or underground space in the particular locations. In fact, the opposite is true, as there are no risers on the affected poles, there is no conduit between them, and there is no evidence or reasonable expectation that such conditions will change in the foreseeable future. Petition, para. 21, 22 and 45.
9. As the FCC has made clear, a pole owner cannot invoke a blanket policy or issue a generic denial of pole access for any part of the pole. *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, DA 20-796 (July 29, 2020), p. 4. Accordingly, Consolidated's policy of denying riser access for privately-owned conduit between Consolidated poles is improper.
10. Comcast respectfully requests that the Commission take notice of the above-cited FCC ruling, a copy of which is submitted herewith, when the Commission considers the merits of Comcast's Petition.
11. In addition to its substantive relevance, the FCC's ruling supports Comcast's position that a declaratory ruling is the appropriate procedural remedy for addressing a pole owner's blanket denial of pole attachments based on policy or hypothetical reasons rather than concrete, specific facts about the capacity, safety or reliability of the

poles in question, or specific engineering standards implicated by the condition of the particular poles.

WHEREFORE, in view of the foregoing, Comcast respectfully requests that the Commission:

- A. Take notice of the FCC's Declaratory Ruling, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, DA 20-796 (July 29, 2020), when the Commission considers the merits of Comcast's Petition;
- B. Accept the information presented herein as a supplement to Comcast's Petition; and
- C. Take such additional action as it deems appropriate.

Respectfully submitted,

**COMCAST OF MAINE/NEW HAMPSHIRE,  
INC.**

By its Attorneys,  
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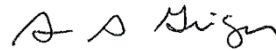
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Dated: August 7, 2020

**Certificate of Service**

I hereby certify that on the date set forth above a copy of this Petition was sent by electronic mail to persons named on the Service List for this matter.



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Susan S. Geiger