

**BEFORE THE
NEW HAMPSHIRE**

PUBLIC UTILITIES COMMISSION

Docket No. DT 20-111

**Comcast of Maine/New Hampshire, Inc. Complaint Petition for Resolution of Dispute and
Declaratory Ruling**

**Consolidated Communications of Northern New England Company, LLC's Response to Petition
dated July 16, 2020**

NOW COMES, Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications – NNE (“Consolidated”) and hereby respectfully responds to the Petition for Resolution of Dispute and Declaratory Ruling, initially dated July 13, 2020, but attested to by a Comcast representative on July 16, 2020 (the “Petition”), from Comcast of Maine/New Hampshire, Inc. (“Comcast” or the “Petitioner”) as follows:

Response to Introduction

Consolidated hereby responds to the Introduction of the Petition as follows:

Consolidated jointly owns utility poles with Public Service Company of New Hampshire (a/k/a “Eversource”) in the Brentwood area of New Hampshire as well as throughout New Hampshire in Eversource’s electric service territory. Petitioner has attached its cable facilities to the poles in multiple communities within New Hampshire. These parties, through various predecessor-in-interest companies, had entered into a pole attachment agreement in April of 2003, as the same has been amended. During August 2019, the Petitioner sought to attach to certain poles in Brentwood in a manner that Consolidated found to be anti-competitive and

Consolidated denied the specific attachment request based on sound engineering and asset management principles. Consolidated offered to the Petitioner a manner to attach to the poles that Comcast rejected. The Petition followed, albeit after Comcast managed to erect its facilities in Brentwood. In that regard, there is nothing for this Commission to adjudicate.

The Petitioner would have this Commission believe the Petition relates to anti-competitive behavior related to pole attachments. This is far from true. Instead, the Petition relates to Comcast's refusal to participate in the pole attachment process applicable to all cable companies and competitive local exchange companies ("CLECs"). Comcast sought to place pole attachments of its choosing on various poles in Belmont (New Hampshire) while refusing to consider the resulting effects on the poles. The Petitioner also ignored the fact that, if permitted to so attach as it sought, the Petitioner's attachments would lead to an extensive number of similar pole attachments throughout the State of New Hampshire, causing unnecessary deterioration to Consolidated/Eversource's poles and creating unmanageable congestion on the poles.¹ This would unnecessarily increase future attachers' costs and timeframes when they attach on the same plant. Similarly, when Comcast attaches on plant in other locations where other competitors have built similar redundant plant, Comcast's costs and timeframes would also increase unnecessarily.

Consolidated is mindful of the requirements of New Hampshire law related to pole attachments. As mandated by Puc. 1303.01, Consolidated, as "...the owner or owners of a pole

¹ Comcast gives no thought to the fact that, based upon its requested relief, multiple attachers on the poles will lead to multiple risers and multiple runs of conduit leading to congested poles. Indeed, Comcast also gives no thought to the potential for weakened pole plant as the integrity of the poles is diminished with each through-bolt drilled into the poles.

shall provide attaching entities access to such pole on terms that are just, reasonable, and *nondiscriminatory.*" (Emphasis added). In addition, "... the owner or owners of a pole may deny a request for attachment to such pole:

- (1) If there is insufficient capacity on the pole;
- (2) For reasons of safety, reliability, or generally applicable engineering purposes; or
- (3) If the pole owner(s) does not possess the authority to allow the proposed

attachment."

The Commission's rule further states that "(c) The owner or owners of the pole shall not deny a requested attachment under subparagraph (b)(1) or (b)(2) above if other make-ready work or another alternative can be identified that would accommodate the additional attachment." *Id.* (emphasis added).

In the instant case, Consolidated clearly informed the Petitioner of valid, lawful reasons why Comcast's preferred method attachment was denied. In correspondence dated February 24, 2020, Att. Sarah Davis (of Consolidated) explained that:

Consolidated Communications is required to manage its infrastructure in a way that is first and foremost safe and secondarily, provides non-discriminatory access to all that seek to attach. In order to efficiently manage its plant in this manner, Consolidated Communications implements policies that will allow for structural integrity and efficient use. Consolidated's Communication denial of the riser access to its poles is an example of just such a practice.

Consolidated denied the riser licenses on each riser pole based on capacity and engineering standards. Licensing risers that allow privately owned structure from one CCI asset to another greatly accelerates premature exhaustion both in the underground (manholes, pullboxes, etc.) and on poles. If Consolidated were to own this infrastructure it would be made available for any attacher that seeks to place facilities on the pole, therefore no additional risers or conduit would be required in the short term to accommodate the next attacher that has an access issue. Oppositely, Comcast's proposal would require the next attacher to the poles to place its own conduit and place yet another riser on each of the poles. This is not an efficient use of

the limited resources and infrastructure. Creating multiple risers on a single pole unnecessarily causes congestion which makes it difficult for Consolidated Communications personnel to access the poles that it owns. If Consolidated owns the infrastructure, then it is available for any third party which later seeks attachment to Consolidated's poles.

See Petition, Attachment 9, Correspondence of Att. Davis to Sharon L. Webber, Deputy General Counsel of Comcast Corporation.

Indeed, in following New Hampshire law, Consolidated did not deny Comcast's request for an attachment to the poles in Belmont. Consolidated offered Comcast a method to install the Comcast pole attachments, but Comcast refused the attachment offered. In order to ensure that risers and conduit would be made available to other carriers, Consolidated offered an "... alternative ... that would accommodate the additional attachment." See Puc 1301(c). Consolidated offered to install a riser and conduit in a manner that afforded other carriers access and that would allow Consolidated to most safely manage its (and Eversource's) pole assets. Additionally, in the event that Comcast believed it could build the conduit in a more inexpensive manner, Consolidated offered to allow Comcast to purchase and install the conduit.

Comcast sites NH RSA 231:160 and requests that the Commission find Consolidated's policies regarding pole attachments in this instance to be anti-competitive because Comcast has "...an independent statutory right to install and own [its] own conduit..." See *Petition* at ps. 4-5, ftnt. 6. Comcast's reliance on RSA 231:160 is misplaced. This statute states:

231:160 Authority to Erect. – Telegraph, television, telephone, electric light and electric power poles and structures and underground conduits and cables, with their respective attachments and appurtenances may be erected, installed and maintained in any public highways and the necessary and proper wires and cables may be supported on such poles and structures or carried across or placed under any such highway by any person, copartnership or corporation as provided in this subdivision and not otherwise.

This statute merely allows a party to erect poles and place assets, such as conduits and other attachments, on the party's respectively owned poles in accordance with various other statutes within the statutory subdivision. Nothing in RSA 231:160 or otherwise permits one party (i.e., a Comcast or other cable company) to unilaterally usurp control of another party's infrastructure (i.e., Eversource and Consolidated's jointly owned poles) and erect whatever attachments it so chooses in whatever manner it so chooses. Instead the statute merely allows the specified utilities to erect their own poles and their own cables and conduit when such party follows the applicable laws set forth in the subdivision and secures municipal approval related to the installation of the assets in the municipal rights-of way.

What the Petitioner seeks is for the Commission to unconstitutionally take Consolidated and Eversource's property and turn it over to third parties to basically do whatever the third parties want to do in terms of pole attachments. There simply is no valid reason for the Commission to undertake such action and, as the Petitioner already has installed its facilities, there is nothing for the Commission to adjudicate.

I. Parties

1. Consolidated admits that Petitioner has attachments on multiple poles solely or jointly owned with Eversource in New Hampshire. The remainder of Paragraph 1 is neither admitted nor denied.
2. Consolidated admits that it is a joint owner or sole owner of utility poles in the State. Consolidated further admits that it is an excepted local exchange carrier within the meaning of RSA 362:7.

II. Jurisdiction

3. Paragraph 3 of the Petition is admitted.
4. Paragraph 4 of the Petition is admitted.

III. Discussion

5. Consolidated generally admits that the Petitioner is a cable television and broadband provider in New Hampshire. The remainder of Paragraph 5 of the Petition is neither admitted nor denied.
6. Paragraph 6 of the Petition is admitted.
7. Paragraphs 7 through 10 of the Petition generally are admitted in that the paragraphs contain partial, albeit incomplete, provisions of a pole attachment agreement.
8. Paragraph 11 of the Petition is neither admitted nor denied.
9. Paragraphs 12 through 14 of the Petition are admitted.
10. Paragraphs 15 through 17 of the Petition are admitted generally; provided, however these Paragraphs of the Petition do not contain a full version of the parties' various discussions.
11. Paragraph 18 of the Petition is admitted.
12. The majority of Paragraph 19 of the Petition is neither admitted nor denied. Petitioner's preference as stated in Paragraph 19 does not take into consideration Consolidated's requirements to treat all CLECs and cable companies in the same manner and Consolidated may not discriminate against any licensed CLEC or cable company in this regard. Any concerns about damage to the Petitioner's facilities in Paragraph 19 are denied and said concerns are not valid.

13. Paragraphs 20 through 23 of the Petition are neither admitted nor denied.
14. Paragraphs 24 and 25 of the Petition are generally admitted; provided, however the correspondence and email communications referenced therein speak for themselves and provide a more complete depiction of the communications.
15. Paragraph 26 of the Petition is partially admitted in that Section 15.10 of the parties' attachment agreement in fact contains a dispute resolution process. Petitioner's categorization of Consolidated's position regarding the Petitioner's request to own risers and conduit is denied.
16. Paragraphs 27 through 29 of the Petition are generally admitted; provided, however the various correspondence referenced therein speaks for itself and provides a more complete depiction of the communications.
17. Paragraphs 30 and 31 are neither admitted nor denied.
18. Paragraphs 32 through 37 in general are neither admitted nor denied. The broad assertions raised by these paragraphs concerning the need for some type of universal, unrestricted access to the Consolidated/Eversource poles are denied. The paragraphs also purport to recite an accurate depiction of events that took place over a period of time and to that extent, the assertions are denied. Through these paragraphs, Petitioner seeks to relitigate the pole attachment docket and the evidence collected therein that this Commission reviewed over the course of nearly a full year in Docket DRM 17-139, Rulemaking - N.H. Code Admin. Rules Puc 1300, Utility Pole Attachment Rules Readoption and Amendment. *See* <https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-139.html>

19. The above captioned docket reviewed in detail the make-ready processes for pole attachments and pole attachment rates. As stated in the Commission's Office of Legislative Budget Assistant Request for Amended Fiscal Impact Statement, dated April 16, 2018:

The Final Proposal for the Public Utilities Commission's Puc 1300 rules for utility pole attachments includes proposed changes in Puc 1303.04 and Puc 1303.12 to effectively adopt the Federal Communications Commission's (FCC) make-ready work process and timeline rules as set forth in 47 C.F.R. §1.1420 and §1.1422. Those federal rules provide for a more streamlined, segmented, transparent, and expedited process and timeline for completing the make-ready work necessary to permit new attachments on utility poles. In addition, the opportunity for attaching entities to use utility-approved contractors to perform make-ready work not timely completed by pole owner and existing attachers represents an important remedial option for the attaching entities. The Commission expects that any incremental costs reasonably incurred by pole owners to comply with the proposed new make-ready work process and timeline rules will be passed on to the attaching entities requiring performance of the make-ready work.

20. The balance of the Petition, Paragraphs 38 through 61, contain conclusions of law for which no responses is necessary. To the extent there are assertions and/or statements of purported fact in any of Paragraphs 38 through 61, said assertions and/or statements of purported fact are denied.

21. Consolidated acknowledges that the Petitioner filed a Supplement to Petition on Friday, August 7, 2020. Consolidated reserves its right to file a supplemental response to same.

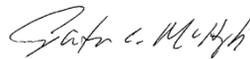
Conclusion

Consolidated has acted in accordance with New Hampshire law and the Commissions' Administrative Rules for all pole attachments sought by Comcast. The entirety of Comcast's requested relief, set forth in Section V of the Petition, should be denied.

Dated at Manchester, New Hampshire, as of this 10th day of August, 2020

Dated: August 10th, 2020

CONSOLIDATED COMMUNICATIONS OF
NORTHERN NEW ENGLAND COMPANY, LLC
D/B/A/ CONSOLIDATED COMMUNICATIONS –
NNE



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